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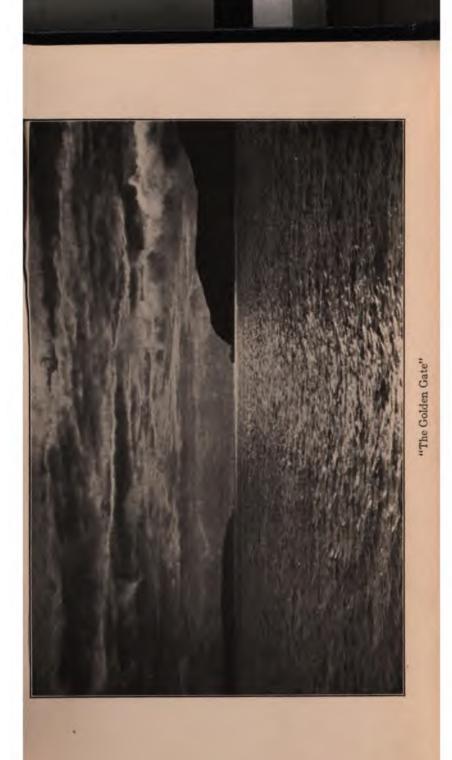


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CHAPTERS ON THE HISTORY

OF THE

SOUTHERN PACIFIC

By

STUART DAGGETT, Ph.D.

Professor of Railway Economics and Dean of the College of Commerce, University of California; Author of "Railroad Reorganization"



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PREFACE

So far as the author knows there is no published study which discusses in detail the important business problems connected with the history of the Southern Pacific Railroad lines. Most of the books which contain references to the Southern Pacific or to the Central Pacific limit themselves to a few chapters upon the romantic aspects of their construction. The few works which treat of the later period confine themselves chiefly to particular episodes in Southern Pacific history, often with the deliberate attempt to discredit the railroad company. The truth is that most writers upon the Southern Pacific have relied upon the reports of the United States Pacific Railway Commission or on Bancroft's "History of California," and very few have done original work from source material.

Yet the usable material dealing with the subject of Pacific railroads is abundant. The Southern Pacific has left a broad trail in California. The record of its doings is to be found in court reports; in state, city, and federal records; in the public testimony, or still better, in the private letters of owners or managers of company enterprises; in the reports of the company itself and of its engineers or other representatives; in pamphlets without number; in files of newspapers. It is true that much of the data is partisan and unreliable as to details. Yet a partisan statement is serviceable if one knows it to be partisan, and, if one has reliable information with which to check the unreliable, the extent of partisan exaggeration in a given case becomes itself a fact of no insignificant importance.

Most of the documents used in the following pages have been consulted in one or another of three large collections: that of the Bancroft Library of the University of California; that of the Hopkins' Railway Library of Stanford University; and that of the State Library at Sacramento. Use has also been made of data in the office of the Secretary of State of California and of the State Railroad Commission. In certain cases the manuscript has been submitted to officials of the Southern Pacific Company for their comment, or to shippers or business men who were believed to be well-informed. The work has been more or less actively in progress over a period of eight years so that there has been more than usual opportunity for checking, comparison of views, and the testing of material. It is the author's hope that he has at least examined all the significant classes of information on the particular subjects which he has discussed. With a subject so extensive it is rarely, if ever, possible to reach all the fugitive literature, or to consult all the living men from whom opinions or scraps of information might be obtained. The most that can be said is that there has been a diligent search, with good facilities, through a number of years.

The conclusions which the writer has himself reached with respect to the political and business activities of the Southern Pacific in California, he has explained in the book at length and will not now repeat. There is claimed for them no more conclusiveness than the facts presented in each particular case may justify, although the conclusions are free from conscious bias, and the author's own interests are engaged on neither side.

Acknowledgment is hereby made of the courtesies extended by the libraries of Berkeley, Palo Alto, and Sacramento, and of the patient attention which individuals have given to particular portions of the book.

STUART DAGGETT

Berkeley, California, February 1, 1922.

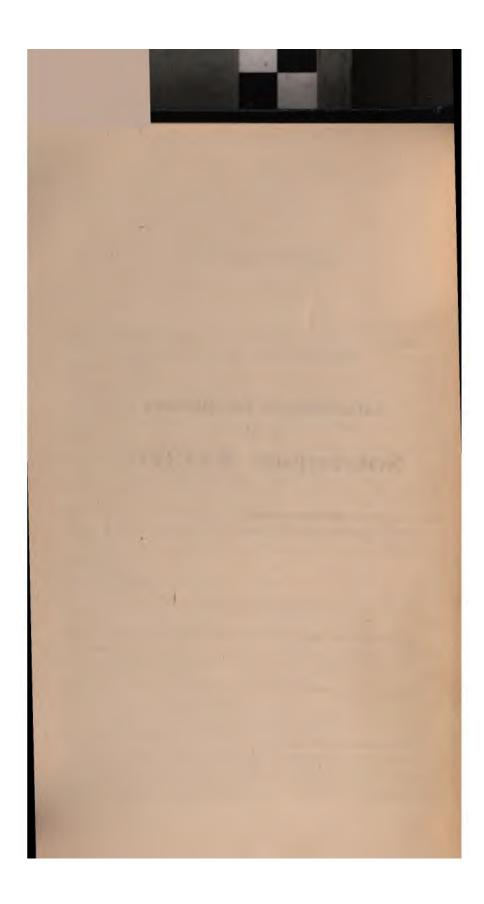
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CHAPTERS ON THE HISTORY OF THE SOUTHERN PACIFIC



CHAPTER I

INCEPTION OF THE PROJECT

Significance of the History

The history of the Southern Pacific and the railroad companies connected with it affords one of the many examples in American economic life of a great industrial organization built up from small beginnings within the lifetime of one group of men. It is a story full of the interest which attaches to constructive achievement in any line. When we remember that as late as 1870 there was no railroad west of the Mississippi-Missouri River except the Northern, Union, Kansas, and Central Pacific railroads, which possessed a mileage as great as 300 miles, and when we recall that in 1860 the total railroad mileage of the states in this same territory amounted to only 6,000 miles, we are able to form some idea of the successful energy which created a system of 861 miles of railroad in the course of six and one-half years, across an unsettled country, in the face of obstacles due to climate, altitude, and distance from centers of traffic and of

The history of the Southern Pacific is significant, however, for still other reasons than because it illustrates what men can do in spite of serious difficulties. The company's record is important to the student of transportation problems because there is embodied in it much of the experience of the Pacific Coast with respect to railroad construction, railroad finance, railroad rate-making, and the relation of railroad corporations to the public at large, as represented by local, state, and national governments. What the Pacific Coast, and what in particular the state of California know, first hand, of the habits and

policies of railroad corporations, is mainly derived from contact with the Southern Pacific Railroad and its auxiliary companies.

The narrative that follows is offered as a contribution from the far western portion of the United States which may help to explain the attitude of that section toward transportation matters; as well as an account of some phases of the earlier development of a railroad system which is now one of the most powerful in all the country, whether we compare this system with the railroads of the East or with those of the West.

The Southern Pacific system today embraces lines from Ogden and New Orleans on the east, to Portland, San Francisco, and Los Angeles on the west. The part of the system first built, however, and at all times the most important part of it, is that section reaching from a few miles west of Ogden, Utah, to the cities of Sacramento and San Francisco. This portion of the larger system was built and is owned by the Central Pacific Railroad Company. It is therefore to the circumstances attending the construction of this portion of the line that attention will first be directed.

Early Activities of Theodore Dehone Judah

² The statement in the text is sufficiently accurate as a preliminary generalisation. As will appear later, the road between Sacramento and Oakland was not built by the Central Pacific, but by certain other companies of which the Western Pacific and the California Pacific were the most important. It may also be important for some purposes to observe that the Southern Pacific system enters Ogden over Union Pacific tracks, and New Orleans over the tracks of the Illinois Central Railroad Company.

New York Railroad then building to connect with the Erie. This was a responsible position for a man with so brief a period of training. When Judah came to California in 1854 he was only twenty-eight years of age. He was soon to make it evident, however, that he possessed more than respectable engineering ability, while he also displayed a capacity for sustained enthusiasm in connection with the project for a transcontinental railroad which eventually overcame all obstacles and resulted in the formulation of definite and successful plans for a transcontinental line.²

Judah began work in California as engineer of the Sacramento Valley Railroad. He left the service of the company, however, before the road was finished to Folsom. Subsequently he made a survey for a railroad from Sacramento to Benicia, and also one for a short branch on the California Central Railroad. Still later he was employed by the trustee of the Sacramento Valley Railroad, J. Mora Moss, and the superintendent, J. P. Robinson, to explore the Sierra Nevada Mountains for wagon road routes north of the south fork of the American River, and at the same time to act as agent for the Sacramento Valley Railroad in soliciting freight.

Details of Judah's activities between 1854 and 1860 are difficult to obtain. We know that he visited Washington in order to procure the passage of a bill making grants of land to California for railroad purposes. In 1859 he was the delegate from Sacramento to the Pacific Railroad Convention, where he urged the importance of a thorough survey before any decision should be made regarding the route of a transcommental railroad. When the convention adjourned he was set to Washington at his own expense to urge the passage of

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bill such as the convention favored. He returned in 1860 without having accomplished his purpose, but convinced that Congress was in favor of granting federal aid to a railroad to California from the East, and that it would act when more important matters had been disposed of.3

Discovery of Transcontinental Route

It was after Judah's return from Washington in 1860 that he undertook the explorations for the Sacramento Valley Railroad to which reference has been made. Doubtless while engaged on this work he visited Dutch Flat, and doubtless also his enthusiasm for a transcontinental railroad became generally known. Judah was no mountaineer, but he could readily profit by the knowledge of men acquainted with the country. Such a man he found in Daniel W. Strong, a druggist at Dutch Flat, who accompanied him on his explorations. We have Strong's statement that he himself conceived the idea that immigrant travel could be diverted through the Dutch Flat country by the construction of a railroad, and that he hired assistants, made a reconnaissance, and found a continuous divide over which he thought a road could pass. Knowing that Mr. Judah was trying to find a pass over the mountains, he wrote to him, and Judah came from Sacramento to Dutch Flat. Strong says that he showed Judah the route he had discovered, and that Judah thought well of it.4

Such is Strong's testimony given years afterwards, when the Central Pacific had proved a success, and it was a distinction to have been connected with it. It is possible that Strong overestimated his contribution to the work. Yet the essential

Judah's report of his mission to Washington as a delegate of the Pacific Railroad Convention is printed in full in the Sacramento Union for July 25, 1860.

4 Testimony taken by the United States Pacific Railway Commission, appointed under an Act of Congress approved March 3, 1887, entitled, "An act authorizing an investigation of the books, accounts, and methods of railroads which have received aid from the United States, and other purposes." (50th Congress, 1st Session, Senate Executive Document No. 51, pp. 2838-39, testimony D. W. Strong.) Hereafter referred to as United States Pacific Railway Commission.



tact is that Judah was in the mountains in August, 1860, and that he or Strong, or both of them hit upon a route which Judah pronounced practicable. One may hazard the guess that Strong pointed out a pass and Judah tested it with instruments. Mrs. Judah repeats the story as she heard it:

It was in the drug store of Dr. Strong at Dutch Flat that the first profile was marked out from notes taken by them (Judah and Strong). Judah could not sleep or rest after they got into town and the store, till he had stretched his paper on the counter and made his figures thereon. Then, turning to Dr. Strong, [he] said for the first time, "Doctor, I shall make my survey over this, the Donner Pass, or Dutch Flat route, above every other." ⁶

Appeal for Funds

Judah drew up articles of association for a company late in 1860, and endeavored to get subscriptions for stock, but without much success. Meanwhile, the publication in the newspapers of information relating to the Dutch Flat route cost him his position with the Sacramento Valley Railroad, for the trustee of the company, J. Mora Moss, took the position that the information acquired by Judah while an employee of the Sacramento Valley belonged to the railroad company, and should not have been published without its consent. It is said that Judah was very indignant, but to no avail.⁷

By October or November, 1860, the record thus shows that Judah had satisfied himself of the existence of a route across the Sierras, and that he was intensely in having this railroad built. He was not personally capital, although not entirely without means, and

⁵ The expenses of this preliminary investigation were a sround Dutch Plat. A paper dated at Dutch Plat, June st duding that of D. W. Strong. No subscription was for owe much as \$10 apiece. (United States Pacific Railway Comm

⁶ Judah manuscript, letter of Mrs. Anne Judah.

⁷ Bvidence concerning projected railways across the st., testimony L. L. Robinson.

transforming his bare project into an actual operating line depended entirely upon the financial support which he could obtain. In November, accordingly, we find Judah endeavoring to give wide circulation to the results of his discoveries.

Under date of November 1, 1860, a circular letter was issued directing the attention of the public to "some newly discovered facts with reference to the route of the Pacific Railroad through California." This letter asserted that a practicable line had been discovered "from the city of Sacramento upon the divide between Bear River and North Fork of the American, via Illinois Town and Dutch Flat, through Lake Pass on the Truckee River, which gives nearly a direct line to Washoe, with maximum grades of 100 feet per mile." The estimated length of line in California was 115 miles. It was said that if the Pacific Railroad bill then pending in Congress should be passed, providing an appropriation of \$13,000 per mile from the navigable waters of the Sacramento River to the base of the Sierra Nevadas; thence \$24,000 per mile to the summit; thence an additional \$3,000 per mile for each degree of longitude crossed until the 100th degree was reached, the entire road could be graded without appeal to private investors, leaving only the iron, rolling stock, etc., to be provided from private means. The projected railroad might connect with the Sacramento Valley Railroad at Folsom, or with the California Central Railroad at Lincoln. Subscriptions were asked to an amount of \$1,000 per mile for 115 miles, with 10 per cent paid in, to allow the organization of a company under the state law; and it was promised that the money subscribed would be used to make a thorough, practical railroad survey.8

In a letter dated the previous day, and addressed to John C. Burck, member of Congress from California, Judah added a few details:

⁸ United States Pacific Railway Commission, pp. 2960-61, testimony D. W. Strong.

affectionately called by its inhabitants, was less wealthy than San Francisco, but for that very reason might be expected to take an interest in a project which promised her, for some years at least, a position of relative advantage with respect to the trade of the interior. The leading newspaper in that city, the Sacramento Union, could be counted on to support any plausible Pacific railroad scheme for political reasons. The citizens had further the advantage of first-hand experience with the workings of the Sacramento Valley Railroad, which had been opened from Sacramento to Folsom in 1856, and was still the only railroad in the state.

It does not, however, appear that these various factors stirred the people of Sacramento to any extraordinary enthusiasm over Judah's scheme, or that they regarded him in any other light than that of an engineer with a risky plan, which it was very desirable to have someone other than themselves finance. Judah, however, called a meeting at a local hotel, and people came. He told them he had made twenty-three barometrical reconnaissances over the Sierras, and had found a line. He needed money to carry the project further, in particular to make a thorough instrumental survey, and he asked them what they would subscribe. Nobody subscribed very much. Huntington says that some gave a barrel of flour, and some a sackof potatoes. Still, the additional subscriptions necessary to the legal organization of Judah's company probably amounted to as much as \$56,500 10 on the 115 miles of line contemplated and small miscellaneous offerings were not likely to carry the promoter very far.

Collis P. Huntington

It is at this juncture that we first hear the names of Collin P. Huntington, Leland Stanford, Charles Crocker, and Mari Hopkins, all prosperous business men in Sacramento. Hunt

¹⁰ Sacramento Union, January 4, 1861.



Sketch of train on the Sacramento Valley Railroad, 1860



ngton and Hopkins ran one of the largest hardware stores in Stanford and Crocker were merchants, and in addition, Stanford had dabbled in California politics to the extent of becoming a candidate for the position of state treasurer in 1857 and for that of governor in 1859, getting badly beaten on both occasions. It is difficult, even at this late date, to estimate the qualities of the four men with confidence. Beyond question, Huntington had the greatest genius for business of the four. Born in Connecticut, and self-supporting from the age of fourteen, he was a trader par excellence. his youth he peddled watch findings from New York to the Missouri River. Later, it is related of him that he started for California with a capital of \$1,200, which he increased to \$1,000 during an enforced stay of three months on the Isthmus of Panama. He was cool, calculating, unscrupulous, a tireless worker, and a man with few interests outside of work. Enterprise for the public good interested him little. He had few friends, and some of these he lost in later years. Narrow in his sympathies, vindictive, sometimes untruthful, sarcastic, and domineering, he gained his success through the keenness of his mind and the energy and persistence of his character, and also through qualities of courage and imagination which were not absent from his business plans.

Leland Stanford

Stanford was a New York lawyer, who had practiced four years in Wisconsin between 1848 and 1852, and had emigrated to California in the last-named year to seek his fortunes in that state. Stanford came to California poor as the proverbial church mouse. Bassett, who was later his secretary, and who was likely to know the facts, says that two of Stanford's brothers set him up in business in El Dorado County, near Latrobe, with a stock of miners' supplies. Here Stanford remained a while, in partnership with a man named Smith.

Stanford and Smith were said to have done a good business. They thought they were making money until they found that the San Francisco firm with which they dealt was charging them interest on unpaid balances; whereupon they promptly closed up, retiring with their debts paid, but with very little cash.

From El Dorado County Stanford went to Michigan Bluffs, in Placer County, still trading, and in 1855 he moved to Sacramento to take over the business which his brothers had established there. Presumably his operations in Michigan Bluffs had provided him with a little capital. What was quite as much to the point, he had made a number of friends in the mining district, and it is not unreasonable to suppose that his attention had been directed toward politics. In 1857 and 1859, as has been mentioned, he ran for office, but without success. About this time a prospector in the vicinity of Auburn struck a rich pocket of decayed quartz. He knew Stanford, and put his name down for an interest in the claim. From this mine Stanford is reported to have cleaned up about \$60,000, a sum which put him in comparatively easy circumstances. In 1861 Stanford ran again for the office of governor, and this time was elected on the Republican ticket. He cannot be said to have yet shown any talent for statesmanship, but he was known as a staunch Union man and a faithful Republican, and he had a local popularity besides, which could be trusted to bring in some votes. After his term of office as governor, Stanford held no political position until 1885, when he was elected United States senator in place of A. A. Sargent. This office he retained until his death. He appears at one time to have had aspirations towards the presidency of the United States, though his candidacy could hardly have been considered Certainly he served with distinction neither as seriously. governor nor as senator.

Stanford's most marked traits were tenacity of purpos and a certain rude energy in execution. His associates credited

INCEPTION OF THE PROJECT

in with great solidity of judgment. Like Hunting to a scrupulous in the methods which he employed to adds, but, unlike him, he showed ambition if no attained of the business field. In private life, statistinguished by his love of horses, and by his domain inversity founded in memory of his son. One make in inferior to Huntington in business affairment and the attained of the man, the attitude of mind an enemy to say of him that "no she lion whelps or a bear her cubs, will make a more will Mr. Stanford in defense of his material invaluable to the transcontinental railroad project of its development."

Crocker and Hopkins

The other two members of the quarters with fewer words. Charles Crocker had than Huntington. He had been peddier miner, and trader. In 1855 he was added Sacramento. First and last, his strong point of men. It was Crocker who drove the roaring up and down the line, as he put deciding the larger problems of policy is no evidence that he had an important endeavored to sell his holdings to only continued in the organization and mable to buy him out. 12

[&]quot;Stanford's election to the United Sustained by the an open breach between the Stanford's friends, and not Stanford himself and have been difficult to persuade an open proming a public service in allowing his sustained.

in the road, I weighed nearly all the interface of the country of the chinaman with the chinaman with the country of the count

Last of all, we have to mention Mark Hopkins, the "ins man." Hopkins died in 1878, so that his connection w railroad work lasted only fourteen years, and during part this time he was ill. Less is known of him than of any his associates. He was the man of detail, the care scrutinizer of contracts. He was Huntington's partner in hardware business for twenty-four years, and yet in all t time, according to Huntington, he never bought or sold much as \$10,000 worth of goods.18 That is to say, he a no trader. Bancroft speaks of him as the balance wheel in business. We hear of him later as objecting to perso indorsements by the partners of Central Pacific notes. Crocker once said of him that he was a long-headed n without much executive ability but a wonderfully good n for an executive officer to counsel with. Possibly such a n played a useful part in the Central Pacific organization.

Survey Financed

Huntington, Stanford, Hopkins, and Crocker knew exother as merchants will. Crocker and Stanford may also has met in a political way. The four of them seem to have be friends, at least as early as 1860. Now it appears to Huntington and Crocker, and possibly Stanford and Hopking also, attended one of Judah's meetings in Sacramento, a were somewhat impressed by his statements. This was second stage in the Central Pacific enterprise, when the particle was in the presence of capitalists, and was seeking convince them that a probability of profit lay in his pla Huntington says that he spoke to Judah after the public meeting, and that Judah came to his house the following evening

¹³ Huntington manuscript, p. 36. The Bancroft Library of the University of California possesses notes of interviews with a number of men prominent in California history colleby H. H. Bancroft or his representatives. In some cases these notes are very full and forming. They will be referred to in the present volume as "Huntington manuscript," etc. See also Redding, "Sketch of the Life of Mark Hopki (San Francisco, 1881).

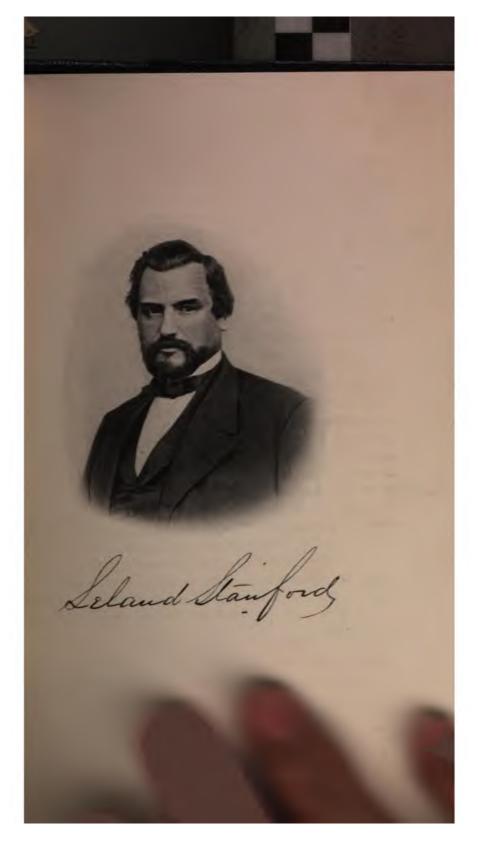
from the first, it was fortunate for Mr. Judah that, owing this familiarity with conditions both at Washington and California, he was in a position to inform his prospectivelients of the likelihood of government aid no less fully an authoritatively than he could advise them concerning rout over the Sierras.

Indeed it was only on the question of government assistanthat Judah could supply business men of Sacramento wi information of a definite sort. He really knew little about 1 probable cost of a transcontinental line. In his original repo of November, 1860, he had declared that the Central Pacil could be built for an appropriation ranging from \$30,000 \$72,000 per mile, varying with the difficulty of the groun but this was an estimate based on a very cursory examinati of the line, and could pretend to no exactness. Possibly he w influenced by the fact that the Sacramento Valley Railro had been contracted for in 1854 at \$45,000 per mile, paya 44 per cent in capital stock of the company, 39 per cent in per cent bonds, and 17 per cent in cash. This was equivalent to perhaps \$33,000 in cash. The contract price in this did not include, however, the cost of right-of-way, de grounds, and engineering expenses, for which additional was reserved.16 Only one year later, when the first inmental survey of the Central Pacific was completed, Judah forced to change his estimate to \$88,428 per mile for first 140 miles of that railroad, including 51 miles estimated at \$1,000,000 per mile or above. Even these figures later revised.

Estimating Probable Earnings

Nor was Judah's information about probable earning great deal more trustworthy than that relating to pro-

¹⁵ Report of a committee of the board of directors, Sacramento Valley Railpany, August 7, 1855.







tosts. There are various ways of estimating the earnings which a new railroad is likely to secure-yet all of them may give curious results when applied to territory which has never injoyed the benefits of any rail transportation at all, as was substantially the case with California before the Civil War. In general, engineers in California had to recken with the facts that the population of the state was small; that it had only three cities of importance-San Francisco, Sacramento, and Stockton; that there was but one important business, mining; and that a dense traffic could accordingly be expected only in the distant future after the development of the country served. As a practical expedient most engineers in California who desired elaborate data had some more or less careful count made of the business moving over their projected route by pack train, wagon train, stage, or boat, and then made the broad assumption that this same volume, or this volume increased by an assumed factor, would move over a railroad during its early years. Such was the nature of the estimate made by the incorporators of the Sacramento Valley Railroad in 1853,17 of the Stockton and Copperopolis in 1862,18 of the Placerville and Sacramento Valley Railroad in 1863,16 and of the North Pacific Coast in 1873.20 Judah had no greater facilities than other engineers of the time, and in his own estimates followed the prevailing custom.21

Estimates of this nature were not accurate, and it was unreasonable to suppose that they should be accurate. Judah

UArticles of association and by-laws of the Sacramento Valley Railroad Company, bother with an estimate of the gross receipts of the road when in operation, New York,

³ Engineer's report of a preliminary survey of the Stockton and Copperopolis Railroad with estimates of cost and traffic, October, 1862.

¹ Report of the chief engineer on the survey, cost of construction, and estimated name of the Placerville and Sacramento Valley Railroad of California, San Pransisco, Mt.

[&]quot;Report of President M ... avatockholders, 1873.

I the preliminary survey, cost a toad of California, etc., O. 1864. Reprinted in the control of the Control of

^{1862;} report,

in 1862 put the probable gross receipts of the Central Pacific on the first 160 miles out of Sacramento at \$4,654,240, or \$29,089 per mile. Mr. Montague, who succeeded him, estimated the annual receipts as far as Dutch Flat at \$27,209 per mile and for the whole road, as far as Nevada Territory, he named the figures of \$5,456,050, or \$34,100 per mile. These were very optimistic figures. As a matter of fact, the earnings of the Central Pacific never much exceeded \$14,000 a mile, and during the early period, up to 1870, were as often below \$10,000 a mile as they were above it. If it had not been for an operating ratio which in 1866 and 1867 touched the extraordinary figure of 23 per cent, and which did not reach 50 per cent until 1877, the owners of this road could scarcely have kept it out of receivers' hands, so great was the miscalculation.

Organization of Company

We may assume, then, that Huntington and his friends went into the Central Pacific project as a speculation from which they hoped to retire with a profit derived largely from construction paid for out of government funds. Adopting this assumption, the next steps in advancing the enterprise may be briefly described. The meetings in Sacramento which have been mentioned took place in the winter of 1860-61. No progress in surveys could be made at that time, while the Sierra passes were covered with snow. In April, however, a meeting of subscribers to the stock of the Central Pacific Railroad was held in Sacramento, and on the 28th of June, 1861, a company was organized under the general law of the state, to be known as the Central Pacific Railroad of California. The capital of this corporation was set at \$8,500,-000, divided into shares of \$100 each. The railroad contemplated was to run from Sacramento to the eastern boundary of California, over an estimated distance of 115

miles. Huntington, Hopkins, Stanford, and Crocker subscribed to 150 shares each, as did James Bailey and Theodore
Judah. Charles Marsh took 50 shares, and other parties
varying, but lesser amounts, to a total of 1,245 shares, or more
than the \$1,000 per mile required by the law. Leland Stanford, Charles Crocker, James Bailey, Theodore D. Judah, L. A.
Booth, C. P. Huntington, Mark Hopkins, D. W. Strong, and
Charles Marsh were the first directors.

Instrumental Survey Made

As soon as the season permitted, Judah was sent back into the mountains, and in October, 1861, the directors had before them the substance of his second report, this time based on an instrumental survey. Judah now thought that a railroad from Sacramento to the state line would cost \$12,380,000, or \$88,428 per mile. He did not push his surveys beyond the point at which he reached the Truckee River, but from his general knowledge of the country he estimated that the 451 miles between Lassen's Meadows and Salt Lake could be built for \$45,000 per mile, and that the whole road of 733 miles could be constructed for \$41,415,000, or an average of \$56,500 per mile.²²

In every way this second report was a more careful piece of work than the one which had preceded it. The new route differed from that recommended in November, 1860, mainly in that it ran from Sacramento through Lincoln and Centralia instead of through Folsom, and also in the greater detail of its location. The principal characteristics of the line were two: (1) that it followed a nearly continuous ridge from Lincoln to the summit of the mountains, and (2) that east of the summit the road wound down the side of the mountain to Lake Truckee, following the Truckee River from the lake

Report of the chief engineer on the preliminary survey, cost of construction, etc., October 22, 1862 (October 1, 1861), sup. cit.

in the direction of Humbolt Sink, and entirely avoiding the second summit of the Sierras and the crossing of the Washoe Mountains.

This is substantially the line of the Central Pacific today. The maximum grade which Judah allowed himself was 105 feet to the mile. Judah did not at this time re-examine alternative routes via Georgetown and via Henness Pass, which he had considered and rejected the previous fall. Nor did he refer to the line via Beckwourth's Pass, the present route of the Western Pacific, which he later admitted to be easier in grade, if longer in distance, or to the possibility of a route directly east from Folsom via Placerville around the south end of Lake Tahoe. It is probable, however, that these two last-named routes were familiar to him in a general way, as considerable quantities of freight consigned to the Nevada mines were already moving over them.

Emphasis should be laid upon Judah's survey of October, 1861, because the continuance of the Sacramento capitalists in the enterprise depended upon its favorable outcome. After it was completed Huntington and his friends became, on the whole and except during certain intervals of weakness, inclined to see the project through even at the risk of their personal fortunes, provided reasonable government assistance could be secured. It was with this understanding that Judah went back to Washington in 1861 to procure the passage of needed legislation, and it was in this spirit that a formal beginning of construction upon the Central Pacific was made at Sacramento on January 8, 1863.

CHAPTER II

RESOURCES FOR CONSTRUCTION— STATE AND EDGAL AD

States of Pands

Some years after the Council Pacific and Western Pacific railtoods were completed. Lebard Standard half before a contribute chosen by Congress the following memorandum showing the receipts of these two rands from all aparons up to December 31, 1869:

MEMORANDUM SERVING THE RECEIPTS OF THE CENTRAL AND WESTERN PACTIFIC RATIOSADS FROM ALL SOURCES TO DESERVING \$1, 1860

Source of Funds	Par Value	Approximate Some Realized
United States bonds issued to Central and Western Pacific		S20,75,000
Central and Western Pacific first maragage		
bonds	- 155. 330	M. GUMM
Central Pacific convertible bonds	1.453.000	Sarran
Central Pacific state aid bonds	1,500,800	orandos.
City and County bonds:		
San Francisco to Central Pacific	400,000	*865.985
Sacramento to Central Pacific	300.000	190/1901
Placer County to Central Pacific	3557,000	140/160
San Francisco to Western Pacific	3,90,000	1-2.00
San Joaquin County to Western Pacific	350.000	155,000
Santa Clara County to Western Pacific	1,50,000	100/1000
Land sales, balance Central Pacific		107,000
Profit and loss balance, January 1, 1870		1,010,000
Total		\$40,002,000
Company owed Contract and Finance Company		
Grand total	• • • • • • • • • • • • • • • • • • • •	\$47.889,000

We have in the foregoing table a summaresources on which Judah and the Huntington gas to draw in order to build a transcontinental romoticed that there is no mention in the table of fortunes of the associates, unless the contribution gentlemen appears in the profit and loss balandebt to the Contract and Finance Company earnings of the railroad during construction, proceeds of the sale of Central Pacific capital these categories some slight addition to Stamprobably be made, though the importance of not be great.

Collectively the fortunes of the associated siderable, were not sufficient to cover more than expenses of the work. Judah had but him according to Huntington's own statement some combined assets of Stanford, Crocker, and lington and Hopkins, amounted to something when the construction of the Central Particles of the construction of the Central Particles of the figure at \$160,000, \$109,000.3 We do not know, as a matter property the associates possessed, but we do slight compared with the undertaking which

Earnings and Stock Issues

Probably, indeed, the earnings of the Croad during construction were more important tributions of the partners. Between 1863 to the calculations of the United States Pamission, the gross earnings of the Central

[†] United States Pacific Railway Commission, p. 3774, be ² Complaint of Samuel Brannan, June 21, 1870. Filed in Pacific Railroad, in the District Court of the Fifteenth June California.

³ Bancroft, "History of California," Vol. 7, p. 545, 2001 associates' property in Sacramento County in 1861 was \$110

×

a day in time. If on the average, each adult makes one visit per amum to the upper country, and taking 1,300, the number of registered voters, as the adult population, it costs every passenger for the round trip \$50 in cash and three days in time—excess over railway fare, \$30; board for two extra days, \$4; value of time at \$2 per day, \$4; total excess, \$38; total loss to 1,300 passengers, \$49,400. I contend, therefore, that the people of Tulare County are now actually paying, in addition to the loss or inconvenience resulting from isolation from market, the sum of \$77,780 per annum, for the privilege of being without a railroad.

There was little that was novel in this sort of argument, or in the further contention that the increase of the tax roll of the counties, due to railroad construction, would yield a revenue more than sufficient to cover the taxes incident to the granting of a subsidy. Better transportation meant wider markets, denser population, higher values. Increasing values and volume of sales meant larger profits, higher wages, lower prices, and generally growing prosperity. These things were matters of reasonable anticipation, so that hard-headed business men had quite as much ground as usually underlies business action to approve of even a considerable pledge of state and county property in order to hasten the building of a railroad system. It could not be known whether or not railways would be constructed without subsidies. As we look at the situation today it seems probable that this would have been done, and that railroad building would not even have been greatly delayed. The risk in waiting was, however, great, and the difficulties of a conservative policy were enhanced by the competition of towns, each seeking priority of railroad connection.

Playing Towns Against Each Other

There is evidence that the promoters of the Central Pacific were perfectly aware of the possibilities of securing local subsidies by playing one California town against another. answered, Western Pacific Railroad and they were Covernments in California not prom

	nor promis		Account to the same of
1	Stanford	Par	Approximate Sum
	Pacific at ten	Value	Realized
	accommodate		
	A. B. Crocker	O	******
	kins, and Stammer	\$400,000	\$300,000
-	sell Central Pa	300,000	190,000
	it was not listed	NORTH TO A PERSON	
	TO THE STATE OF TH	250,000	175,000
	Bond Sales	Central	
	As a matter	250,000	160,000
	even for Central	Western to Western	******
	New York to ge	250,000 to Western	125,000
		150,000	100,000
	D. O. Mills gave		
	sion that there was	twenty years on	
	the bonds the Ce		
	ment, county, con-	Aid.	
		bodies was conside	red legitima
		extended freely to a	
	the associates only	were told that the co	_
	THE SECONDARY OF THE	The state of the state of	THE PERSON A

obligations secures walues. Until transportation show agreement was en agriculture could make but litt his friends would be aducts of agriculture could not for the payment of The mining interest was depressed _____planation publicists pointed out th 6 Crocker manuscript, ranged from \$50 to \$180 a to

> If By rail the trip con hus saving \$15 and

^{*} Ibid., p. 2652, testing in 1871 for which they paid litigation which he described bitigation which he described bitigation which he described bitigation which he described by Ellen M. Colton v. Let formia in and for the County The record in this proceeding the Southern Pacific and the litigate States Pacific and the litigate Pacific and the litigate States Pacific and the litigate States Pacific and the litigate States Pacific and the litigate Pacific and the litigate

Duited States Pacific A

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a day in time. If on the average, each adult makes one visit per amount to the upper country, and taking 1,300, the number of registered voters, as the adult population, it costs every passenger for the round trip \$50 in cash and three days in time—excess over railway fare, \$30; board for two extra days, \$4; value of time at \$2 per day, \$4; total excess, \$38; total loss to 1,300 passengers, \$49,400. I contend, therefore, that the people of Tulare County are now actually paying, in addition to the loss or inconvenience resulting from isolation from market, the sum of \$77,780 per annum, for the privilege of being without a railroad.

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Playing Towns Against Each Other

There is evidence that the promoters of the Central Pacific were perfectly aware of the possibilities of securing local subsidies by playing one California town against another.

FROM STATE

Aid by Cities:

San Francisco, de Pacific

Sacramento, suina Pacific

San Francisco, do Pacific ----

Aid by Counties:

Placer County, sub-

San Joaquin Cour Pacific

Santa Clara County

Aid by State:

Assumption of inter- sember of the Constitutional Conven-\$1,500,000 7 per

Arguments for Lo-

in the early sixties. of corporations. railroads increased be improved, it was progress, because brought to market 1870, and in partin freight charges to the Nor was even more of subsidies in 1870

> It costs for pass consumes generally made in eight hours,

Column in 1871 that the company of land and other good things slong the line between Spadra would build them a railroad on Pheips, president of the Southern vein, told Colonel Baker, of wate opinion that if that county the company, it would run its We also know that pressure the city of Stockton, to induce that well as other privileges, to the motorious that the fears of San in order to obtain terminal facili-

from the point of view of the Pacific, may be gathered from a

way track and survey their line near Aid from local to the most prominent citizens of I you will give us so many thousand here; if you do not we will run where the subsidy was not granted the effect was just as they said, to Here was the town of Paradise, in they did not get what they wanted town 4 miles from there. In every inseruled a subsidy, in money, unless their have established a depot near to tozen them out. As stated h Transles, General Howard, they has manty \$230,000 as a condition Telled them to do.

> 100, Detaber 8, 1874 Prantica Chronich

y Stock Subscriptions

erhaps the earliest California statute in aid of railway ruction was the act approved May 1, 1852, granting to Inited States a right-of-way through the state for the ose of constructing a railway from the Atlantic to the fic oceans. In 1857 the supervisors of Yuba County a authorized to submit to the electors of that county a subscribe \$200,000 to a railroad between Marysland Benicia. And during the following two years the Francisco and Marysville Railroad not only received a grant, but secured an enactment, making it the duty of Board of Supervisors of Sutter County to submit to that vote the question of a \$50,000 subscription to its ital stock, and the duty of the supervisors of Solano and to counties to call elections in those counties with similar mt. No subscriptions were made under these acts.

It seems to have been the intention of the legislature to the Central Pacific and the Western Pacific railroads or the same general fashion as other railroads had been that is to say, to allow counties and cities interested the cribe freely to their stock. By virtue of an act dated to 16, 1859, any county could so subscribe up to 5 per of its assessment roll when popular approval had been that This was not, however, enough. Between March and April 4, 1864, the legislature passed eight acts appecial concessions to the Central Pacific and to the Pacific. Mr. Stanford had become governor of the lawary, 1862, and this legislation had of course his approval.

orized to hold a popular election on the question of

subscribing \$250,000 to the capital stock of the Western, Pacific.²² In April, Placer County was authorized to consider; a subscription of equal amount to the stock of the Central, Pacific.28 Next, Santa Clara County was authorized to hold, an election and to subscribe \$150,000 to the Western Pacific, if it so desired.24 Sacramento received the same privilege in April, to the extent of being permitted to take 3,000 shares of the Central Pacific, 25 and was in addition allowed to give away rights-of-way and certain rights of construction of considerable though indefinite value; 26 while San Francisco was permitted to subscribe \$400,000 to the stock of the Western Pacific and \$600,000 to that of the Central Pacific, making \$1,000,000 in all.27

Invariably subscriptions contemplated in the acts were to be made in bonds running twenty or thirty years, and bearing 7 or 8 per cent interest. Counties were to enjoy the usual privileges of stockholders, but were protected by special clauses against the proportional liability for debts of the corporation resting upon the ordinary stockholder by virtue of state law. The proceeds of county bonds issued in subscriptions were to be used for construction of the road, and it was provided that at least an equal amount of other funds obtained from stockholders was to be so used. It was thus the intention of the legislature that funds for construction should not be entirely derived from county subsidies.

Direct State Aid

In addition to the acts permitting county subscriptions, mention should be made of two important acts by which the state granted direct assistance. The first of these laws was dated April 25, 1863. It authorized the comptroller of the

²² Laws of California, 1863, Ch. 77 23 Ibid., 1863, Ch. 125.

²⁴ Ibid., 1863, Ch. 207. 25 Ibid., 1863, Ch. 310.

²⁶ Ibid., 1863, Ch. 209. The value of these privileges has been estimated at \$200,000.

²⁷ Ibid., 1863, Ch. 291.

draw warrants in favor of the Central Pacific to the \$10,000 per mile, the warrants to be issued when the miles, the second 20 miles, and the last 10 out of were finished. These warrants were to bear 7 per terest if not cashed, because of lack of money in the y to pay them.²⁸

e second act, dated April 4, 1864, repealed the act just and proposed that the state government, instead of warrants, should assume interest on 1,500 of the my bonds, bearing 7 per cent, and running for twenty

This grant, like the earlier one, was made on certain ions, such as that the company should transport free of public convicts going to the state prison, material for astruction of the state capitol, troops, munitions of war, the like, that it should construct at least 20 miles of line may, and in the case of the Act of 1864, that it should over certain granite quarries in Placer County.²⁹

the face of it this grant was illegal, because of clauses that constitution which forbade the legislature to create the in excess of \$300,000 without submitting the proposal pular vote, or to loan or give the credit of the state in the interpretation of the int

But it was sustained on the theory that the act to an appropriation in anticipation of revenue, and not create a debt at all. Thus the company was able to its first interest money in January, 1865.31

on to Aid in San Francisco

rious acts just referred to were of course permissive, cheral the counties seemed very willing to give up to their legal power. The two exceptions were the

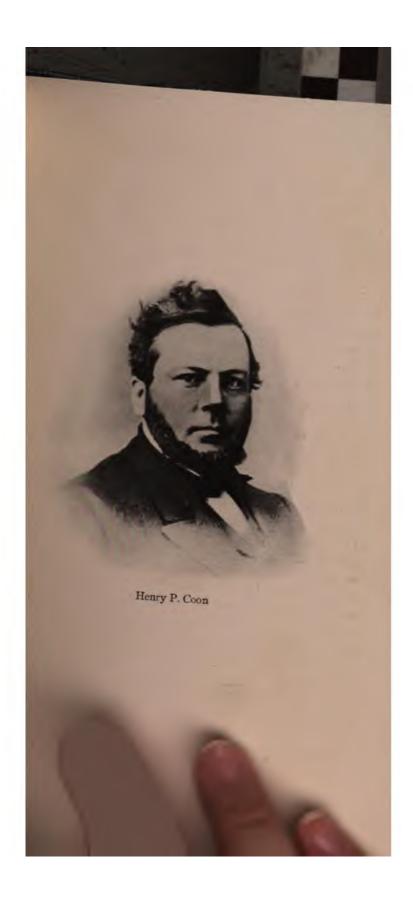
Ch. 314.
Ch. 319.
Twenty years later the quarries were still undelivered.
of California, Arts. VIII.
Sec. 10.
10 (1865).

county of Placer and the city and county of San Francisco. In Placer County there was a very active campaign against the bonds, supported by newspapers such as the *Placer Herald* and the *Advocate*. The proposal for a bond issue was carried, but only by a majority of 409 in a total vote of 3,810.³²

In the case of San Francisco, the city delegation in the legislature divided five to five on the proposal to authorize the city to subscribe. When the law was finally passed, a long and interesting struggle ensued. The first step after the passage of the act was to hold an election in San Francisco in order to ascertain whether the people would approve of a subscription to railroad bonds. This election took place in May, 1863, and the necessary popular consent was secured. There is reason to believe, however, that illegitimate means were employed to carry the election. We have affidavits that Philip Stanford went to the polls at San Francisco in a buggy, carrying a bag of money; that the said Stanford put his hand frequently in the bag of money and took money, some \$20 pieces and some \$5 pieces, to a considerable amount therefrom, and scattered the said money among the voters at the said polls, at the same time calling on them to vote in favor of the said subscription. Another eyewitness confirmed this account, adding that while the sum of money spent by the said Stanford was considerable, he could not tell how much as the crowd around the buggy of the said Stanford was so great. Still another testified to having received a written order on Stanford and others for \$20, in return for which he and a man named Ross were to endeavor to influence voters at the polls to vote for the subscription.33

These affidavits were later supported by the assertic Hon. William A. Piper, on the floor of the House of

³³ Angel, "History of Placer County," 1882, p. 280.
33 "The Great Dutch Plat Swindle!—An address to the Board of Super and People of San Francisco," 1864.



sentatives at Washington, to the effect that he, Piper, was an eyewitness at the election, and saw the brother of Leland Stanford openly going about the polling places, scattering gold and silver to influence and buy votes for the municipal subsidy. Statements of this sort are too detailed and circumstantial to be brushed lightly aside.

Resort to Court

Whether or not the election of 1863 was tainted with corruption, as soon as it was concluded, San Francisco became bound, on or about the 25th of May, 1863, to subscribe \$600,-000 and \$400,000 to the stock of the Central Pacific and Western Pacific railroads, respectively. The fight against subscriptions, however, did not stop at this point. In an attempt to prevent action, suit was brought by a man named W. N. French against the Board of Supervisors, in the case known as "French v. Teschemaker." French was a resident of San Francisco and a taxpayer. Teschemaker was a member of the Board of Supervisors. The suit alleged certain irregularities in the city election, but rested mainly on the contention that the act authorizing the city and county to subscribe was void and of no effect, because it provided that the city and county should not be liable for any of the debts or liabilities of either the Central Pacific or the Western Pacific railroads beyond the amount subscribed, and that this provision as to liability should be a part of all contracts made by the companies for the construction and equipment of their roads. According to counsel, this was an attempt to create an exemption from the proportionate liability imposed on all stockholders by the state constitution, and was not only void in itself, but its lack of force invalidated the whole subscription, since it was not to be supposed that the legislature would have passed the other clauses of the act without the section in question.

On the 23d of May, 1863, Judge Sawyer of the Twelfth Judicial District granted a temporary injunction. On appeal to the Supreme Court, however, this injunction was overruled. The court said:

True, the legislature cannot exempt the city and county from liability, but it can authorize the corporation to refuse to contract with persons who do not waive the proportionate liability established for their protection. How the individual liability of a stockholder of a corporation can be a matter of public concern any more than the liability of a copartner, we are unable to perceive, and we are not aware that it has ever been claimed that the latter liability had its foundation in public policy. It is merely a liability created by law, as it might be by contract, and is intended only for the benefit of those who may deal with corporations. It is but another fund to which the creditor may look when the social fund has been exhausted, and whether he chooses to look to it or not is a matter of no concern to the public. . . . There being, then, only a question of private right involved, there can be no question but that the party interested in the enforcement of the right may contract to waive it.34

Compromise Plan

The opponents of municipal subscription now turned to the legislature, and secured the passage of an act authorizing the Board of Supervisors of San Francisco to compromise and to settle all claims upon the part of the Western Pacific Railroad and the Central Pacific Railroad for cash or other security, in place of bonds claimed by the companies, provided the power to make such compromise should rest in the Board of Supervisors only after and in case said board should be compelled by final judgment of the Supreme Court to execute and deliver the bonds specified in the act. 35

Pursuant to this act of April 14, 1864, the Board of

³⁴ French v. Teschemaker, 24 Cal. 518 (1864). 35 Laws of California, 1864, Ch. 344.

Supervisors appointed a special committee from among their number to consider and report a plan for a compromise. This action was taken on May 23, and the mandamus requiring the supervisors to subscribe \$600,000 to the stock of the Central Pacific, which was essential to the adoption of any compromise, was issued on June 7.86 The committee met with Stanford, reported back to the board, and on June 20 the board passed order No. 582 providing that the city of San Francisco order, execute, and deliver to the Central Pacific 400 bonds for \$1,000 each, in full discharge of all obligations on the part of the city and county to make any subscription to the capital stock of said company.

Order No. 582 was duly approved by the mayor on June 21, and became law on that day. On June 29 the acceptance of the Central Pacific was signified to the board, in due form, and on June 27 the supervisors appointed Messrs. Torrey, Bell, and Titcomb a committee to deliver to the Central Pacific the 400 bonds, with interest coupons attached. Nevertheless the mayor, Henry P. Coon, the auditor, Henry M. Hale, and the treasurer of the city, Joseph S. Paxon, constituting the Pacific Railroad Loan Fund Commissioners, refused to issue the bonds. The result was a petition for a mandamus directed against these persons individually, which developed into the case of People v. Coon.

Agreements in Mandamus Proceedings

The main legal points raised in this new litigation were three:

1. The conditions precedent to the issuance of the bonds under the act of 1864 had not been fulfilled, said the petitioner, in that the board of supervisors had not been compelled by final judgment of the Supreme Court to execute and deliver the bonds.

³⁶ California Supreme Court Records, Vol. 38, case of People v. Coon.

- 2. The second contention was that the railroad company could not call upon the supervisors to issue bonds on the city's subscription unless the railroad should call in from other subscribers the whole amount of their respective subscriptions, or until, under the Act of 1863, a sum at least equal to the amount of the bonds should have been expended on the road from other sources. That either of these things had been done, the defendants vigorously denied.
- 3. It was also declared by defendants that the Act of 1864 had been misconstrued—that it did not relieve San Francisco from her subscription, but simply authorized the city to liquidate that subscription "in cash or other security" instead of in bonds. "We claim," said counsel, "that the act authorized no more than the reduction of the amount of subscription and a change of the mode of payment to cash or other security in place of bonds. It does not authorize a donation of \$400,000 or any other amount. In other words, it authorizes a subscription for any amount less than \$600,000, payable in cash in place of bonds." ³⁷

One has the feeling that at this stage of the proceedings, the first and third of these propositions were not well taken. It was too plainly the intention of the legislature to allow the city of San Francisco to withdraw from its subscription for a consideration, to permit weight to be given to technical points like these. On the other hand, it is very doubtful if the railroad had at this time either called in from other subscribers the whole amount of their respective subscriptions, or had expended on the road from other sources a sum equal to the amount of the bonds. The Supreme Court, however, did not make even this concession, but promptly issued a mandamus against Coon, Hale, and Paxon, commanding and requiring them to execute and deliver without delay, to the Central Pacific Railroad of California, the 400 bonds of the city and

³⁷ California Supreme Court Records, Vol. 38, p. 98, sup. cit.

county of San Francisco, described in the ordinance before referred to.38

Further Litigation

Upon the issue of this mandamus, Coon, Hale, and Paxon signed the 400 bonds. According to a subsequent complaint by the railroad, the bonds so signed were presented by the president of the Board of Supervisors to William Loewy, clerk of the city and county of San Francisco, at a meeting at which a quorum of the supervisors was present. Loewy refused or failed to countersign. On September 27, 1864, a regular meeting of the supervisors was held, at which resolutions were offered requesting Loewy to countersign the bonds, and providing for the affixing of the seal of the city and county to the bonds when countersigned. These resolutions failed of passage, and instead a resolution was adopted requesting the derk to deposit the 400 bonds with the county treasurer, which he did forthwith. The treasurer then refused to deliver the bonds to the railroad, and fresh proceedings were instituted before the Supreme Court, this time asking for a writ of peremptory mandamus commanding Loewy or his successor to obtain possession of the bonds, and to countersign and assist in delivering them to the Central Pacific; commanding the Board of Supervisors or their successors to call a meeting of the board, to notify the clerk of a time and place at which he might complete the countersigning in the presence of a quorum of the board; to cause the seal of the city and county to be affixed to the bonds; and to appoint a committee to deliver the bonds to the Central Pacific; and commanding the members of the Board of Supervisors who might be appointed such a committee, to deliver the bonds to the Central Pacific. It was obviously hoped to tie things down so that no further delay would be possible.

¹¹ People v. Coon, 25 Cal. 635 (1864).

There seems to have been a split in the Board of Supervisors at this time. Six of the twelve members made individual returns to the complaint, and alleged that they had no part in the refusal to deliver the bonds. The other six and the mayor voted to employ counsel and to defend the suit.

Contentions of Defendants

The case came to a hearing January 7, 1865. In some respects the defense now rested on new ground; in some new emphasis was given matters previously brought forward.

The supervisors in January alleged that the election in San Francisco held May 19, 1863, at which the electors of San Francisco had approved the subscription to the stock of the Central Pacific, had been carried by corruption and bribery. This assertion was given great prominence in the answer of the supervisors, though less in briefs of counsel. Nine instances were cited where A. P. Stanford had given sums ranging from \$5 to \$40 apiece to electors, or had thrown handfuls of money among the electors "and thereupon they scrambled among themselves for the same." It was urged that these bribes had had great influence upon the vote and that the election was void. These facts had not been known to the supervisors on June 20, 1864, when order No. 582 had been passed, and defendants believed that knowledge of them would have prevented the passage of the ordinance.

Besides this, the supervisors declared that the passage of ordinance No. 582 had been procured by false and fraudulent representations by the railroad company. More important, it was now contended that the Act of 1863 was unconstitutional, in that the legislature was without power to "impose on a municipal corporation of the state the burden of exclusively building or aiding to build a work of general interest to the state, which is in no sense a work of local interest to the corporation on which the burden is imposed."

It was pointed out that the Central Pacific was a work of general interest to the Pacific Coast. It did not come within 100 miles of San Francisco. It had received large subsidies from the federal government on the ground that it was of national importance. Counsel declared that:

The true test of whether a tax can be exclusively laid on a municipal corporation, is to be found in the purpose for which municipal government is confined within local limits. Citizens living within those limits are exposed to exclusive taxation because, and only because, a peculiar benefit is conferred upon this locality. When the benefit is shared in by the rest of the state, then a state tax is levied, because the citizens of San Francisco received advantage, not in their character as citizens of San Francisco, but as citizens of the state. The state government is as much a benefit to San Francisco as its own municipal government. Yet no one would contend that she could be compelled to support the entire expenses of the former, or that any other city should be compelled to contribute towards the expenses of the latter.

City Compelled to Subscribe

These and other more technical objections were considered by the Supreme Court and were swept aside in a decision rendered at the April term of 1865. The court now held that the legislature had imposed no burden on San Francisco by the Act of 1863, because under that act the city got a consideration, namely, the company stock, for its subscription. The court added:

Nor does it make any difference as to the validity of the compromise whether the bonds were payable in instalments or in gross, nor whether a legal assessment has been laid on the capital stock of the company, for irrespective of the time the bonds under the Act of 1863 might become due, the company held a claim against the city which was a proper subject of and formed a good consideration for a compromise.³⁹

¹⁰ People v. Supervisors, 27 Cal. 655 (1865).

This ended the case. It may perhaps be pertinently inquired why it was, if the subscription required by the Act of 1863 imposed no burden on the city of San Francisco as the Supreme Court said, that the city could afford to give \$400,000 to get rid of the obligation. Yet, perhaps it would be fruitless to follow too closely the windings of the judicial mind. Stanford later declared that the litigation had injured the Central Pacific very much, 40 while E. H. Miller, secretary of the company, estimated that the suit cost the Central Pacific not much less than \$100,000. Of the bonds issued, 315 were sold at \$751.60 each, amounting to \$236,754, while 85 were paid out at par for rolling stock. 41

Subscribing Counties Embarrassed

The reluctance of San Francisco to subscribe was not typical of the general attitude toward the Central Pacific in 1865. But it became more typical as the years went on. For this, there were several reasons.

In the first place, the state was much disappointed by the fact that the completion of the Central Pacific did not inaugurate a period of prosperity. The year 1870 was not a particularly good one in California, and the panic of 1873, with the intense depression which resulted, was soon to occur. Among the first effects of the two rail connections with the East, was an influx of eastern manufactures, unemployment, lower prices, and dissatisfaction. This in no way meant that the construction of the Central Pacific had not benefited California, but it gave evidence of a serious though temporary maladjustment.

Moreover, the bonds which had been so lightly voted, proved a real burden on the scanty population of the counties, which was in no adequate way offset by increases in the assess-

⁴⁰ United States Pacific Railway Commission, pp. 3610-11, testimony Leland Stanford.
⁴¹ Ibid., p. 3464, testimony E. H. Miller.

trolls. Indeed, the railroads in early years were assessed gures that were remarkably low. In Placer County, for ince, the Central Pacific insisted that its road should be seed at \$6,000 per mile, and succeeded in carrying its it in 1865, 1866, and 1867. In 1868 the assessment was ed to \$12,000 per mile. The railroad protested, and when ed to submit, increased the rate of freight to all points in the County about 40 cents a ton. 12 Nor were taxes even such modest valuations easily collected. Between 1866 and 7 railroad tax cases were almost constantly before the rts. At times the Central Pacific refused to pay any taxes all, on the ground that it held a "federal franchise," and other times it objected to the terms of the law or to the sunt of the assessment. 13 The result was to throw the local system into complete confusion.

perience of Placer County

Let us refer again to the experience of Placer County. In 3 the Central Pacific asked for a subscription of \$250,000, mising to add \$9,000,000 to the taxable property of the nty. The county tax rate as fixed in February, 1863, for following year, was 35 cents on \$100, and the assessed ation of the county was \$3,071,911.78, yielding a revenue in county taxes of \$10,751.69. The railroad company ed an address while the matter of a subscription was under sideration, pointing out that 8 per cent on a bond issue of \$0,000 would amount to \$20,000, while a tax rate of 35 cents \$60,000,000 of increased valuation would yield \$31,500, or ear excess of \$11,500, to the county without considering effect of the railroad in increasing the valuation of real te.

These were the results which voters were led to expect.

Angel, "History of Placer County," pp. 158-65.
Pankhauser, "Financial History of California," p. 299 f.

What happened was that the assessed valuation of the property of the Central Pacific in Placer County was \$6,000 per mile as late as 1870, when the county sold its railroad stock; that the total railroad valuation was therefore \$553,500, and that the county tax rate rose from 35 cents to \$1.73½. Moreover, the railroad taxes for 1868 and 1869 were still unsettled and in dispute in 1870 and remained so until 1873. The total receipts of the county from all sources in 1869 were \$127,492.54, of which \$46,499.66 were for the state. Against the \$80,992.88 remaining, the \$20,000 of interest on the subsidy bonds was evidently a material charge.

It was probably not true in general that the financial embarrassment in which many of the counties of California were plunged late in the sixties was due to the pressure of interest charges on bonds issued in aid of railroad construction. highest rates of taxation for county purposes uncovered by the special legislative committee of 1868 which investigated this matter, were \$36.70 per \$1,000 for Tuolumne County, and \$40 per \$1,000 for Calaveras County, neither of which counties had issued bonds in aid of railroads. Extravagance in assistance tendered to railroads was only one of the financial sins of which the counties had been guilty. Nevertheless the burden of outstanding indebtedness for railroads was often severe on communities of declining industry and population. and contributed to the later severe revulsion in popular sentiment with regard to the desirability of local aid to railroad enterprise.

Opposition by Other Transportation Interests

It is proper to mention at this point, also, as throwing light upon popular sentiment, the opposition of the smaller transportation interests of the state to the development of the Central Pacific project. These interests included the stage companies, the express companies, the toll roads, and the Pacific Mail

Steamship Company. In the aggregate their influence was considerable, and it was constantly thrown against the granting of aid to the Central Pacific.

It is a curious commentary upon the effect of government subsidies, that the Huntington-Stanford group brought part of this opposition upon themselves by a deliberate refusal to buy up the Sacramento Valley Railroad for the reason that it was cheaper to build at the expense of the federal government from Sacramento to Auburn than to buy a railroad already in active operation for most of the distance between these points. In cold figures, it would have cost \$400,000 to build a new line out of Sacramento, and \$285,000, according to Central Pacific engineers, to put the Sacramento Valley Railroad in thoroughly good physical condition. But under federal legislation, to be described in a later chapter, only \$250,000 out of the \$400,000 would have to be paid by the Central Pacific in cash, leaving a clear gain of \$35,000 if the policy of construction were pursued.

The result of this decision was to cause the backers of the Sacramento Valley project to denounce the Central Pacific enterprise as a fraud.⁴⁵

End of Local Subsidies

In the year 1868, a resolution was introduced into the California State Senate urging the appointment of a committee to investigate the use of moneys contributed by the state toward the construction of the Central Pacific Railroad. This resolution was indefinitely postponed by a vote of 18 to 17. The same year notices began to appear in the press, urging the legislature to oppose further railroad-aid legislation. In 1869,

⁴⁴ Report of the chief engineer upon recent surveys, progress of construction, and an approximate estimate of cost of first division of 50 miles of the Central Pacific Railroad of California, July 1, 1863.

⁴⁸ Letter of L. L. Robinson, chief engineer, to Chas. A. Sumner and Henry Erstein, Chairmen Committees on Railroads, Legislature of Nevada, Sacramento, February 3, 1865. Printed in a pamphlet entitled "Evidence concerning projected railways across the Sierra Nevada Mountains," smp. cii.

the Sacramento Union, while in favor of a grant to the Stockton and Tulare Railroad, urged the counties to go slow and to secure an amendment to the general railway law, reducing maximum transportation charges to 10 cents per passenger per mile, and 15 cents per ton per mile, before voting aid.

These were but symptoms of a profound dissatisfaction with the results of railroad subsidies. In the fall of 1869 both political parties pronounced against grants of state aid to railroads, but this could not prevent the passage of the so-called "Five Per Cent Act" of 1870, authorizing counties to subscribe to railroad stock up to 5 per cent of their assessed valuation; although it did encourage Governor Haight to veto two bills in March, 1870, the one authorizing the voters of certain counties in the San Joaquin Valley to donate their bonds to the San Joaquin Railroad Company at the rate of \$6,000 per mile,46 and the other providing for the construction of a railroad by the Southern Pacific through Monterey and San Luis Obispo counties, and permitting the counties interested to grant aid. The governor took the position that the proposed subsidies were not only unwise, but that they were unconstitutional for the reason that a donation to a private corporation was not a use of funds for a proper purpose.47 After a fight which attracted much popular attention, the vetoes of the governor were sustained.

In 1871, Governor Haight was defeated for re-election by Newton Booth, the Republican candidate. In the following year, however, the Five Per Cent Act was repealed, and the period of local subsidies in California came to an end.

⁴⁶ Stanislaus, Merced, Fresno, Tulare, and Kern counties. In Kern County the bond issue was limited to \$480,000 and in Stanislaus to \$180,000.

⁴⁷ Letters of Governor Haight, on the constitutional power of the legislature to authorize cities and counties to donate bonds to railroad corporations, Sacramento, 1870.

CHAPTER III

FEDERAL LAND GRANTS AND SUBSIDIES

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Government Aid Deemed Necessary

Serviceable as local subsidies were, there is no question that the most important aid granted to the Central Pacific Railroad came from Congress.1 It was perfectly well understood on the Pacific Coast that no transcontinental railroad and be built without the assistance of the national government. This was the attitude of the California legislature in 1852, when it instructed its senators in Congress, and requested is representatives, to vote for an act providing for the construction of a railway from the Missouri or Mississippi River to the Pacific Ocean, the cost of which should be borne by the general government.2 It was also the position of the Railroad Convention of 1853, which sat at San Francisco under the presidency of Governor Bigler, and of that better advertised gathering known as the Pacific Railroad Convention of 1850. the resolutions of which concerning routes and state bond issues in aid of railroads gave rise to so much heated discussion.8

^{*}Persons who desire details of the controversies in Congress prior to the outbreak of the Civil War may consult Haney, "Congressional History of Railways," or Davis "History of the Union Pacific."

^{*}Laws of California. 1852, p. 276. See also resolutions passed May 17, 1853 (Laws of 183, p. 315); May 13, 1854 (Laws of 1854, p. 224); Pebruary 25, 1854 (Laws of 1854, p. 227); Mark 19, 1857 (Laws of 1854, p. 370); April 1, 1859 (Laws of 1859, p. 390); April 15, 1859 (Laws of 1859, p. 394). In 1859 the legislature adopted a memorial to the same general effect (Laws of 1859, p. 395).

¹ The proceedings of the Pacific Railroad Convention of 1859 were published in the San Praciscs Alls, September 21-26, 1859, and in a special supplement of the same paper. See also The Pacific, October 6, 1859, and other California papers. The convention was attended by disgates from Oregon and Washington. It thought that the Pacific Railroad should see from the city of San Prancisco through the counties of San Mateo, Santa Clara, and Manda, to the city of Stockton, thence over the Sierras by a central route. It favored also should be the Puget Sound. Resolutions were adopted contemplating an issue of \$15,000,000 is back by the state of California to cover the cost of railroads within that state, and an imm of an unspecified amount, presumably \$5,000,000 by the state of Oregon. In February, 1860, an adjourned meeting of the same convention was held at Sacramento. Condended the Composition developed at this meeting to the proposal to bond the state for

Judah's Activities in Washington

Not only was it the attitude of the Pacific Coast that federal aid was necessary, but, still more important, Judah was able to advise his associates that Congress looked with favor upon the plan. He was convinced of this of his own personal knowledge, for he had been in Washington both on his own account and as a delegate of the Convention of 1859, and had reported to his constituents that only the pressure of more important matters arising out of the Civil War prevented favorable action upon the bill which they had sent him east to support. Upon this information, indeed, much of the plans of the Huntington-Stanford group was based.

Late in 1861, the Central Pacific Railroad sent Mr. Judah to Washington to solicit whatever aid the federal government might be disposed to give. We have in Judah's report upon this visit, dated September 1, 1862, a very full account of his negotiations. Judah sailed for the Atlantic states on October 10, 1861. During the trip he busied himself in talking with Mr. Sargent, Congressional representative from California, who was his fellow passenger, and in writing up the results of the survey which he had made during the summer of 1861. On his arrival in New York he completed this report, caused 1,000 copies of it to be printed, and distributed the copies widely where he thought they would do most good. Late in November, after conference with Senator McDougal, of California, chairman of the Senate Pacific Railroad Committee, he proceeded to Washington.

From the time of his arrival there to the following July, Judah was engaged in energetic lobbying. His brief previous visits to the capitol had acquainted him with the routine of business there, as well as with the personalities of a considerable

^{\$15,000,000.} The vote taken at San Francisco was reconsidered, and a new resolu passed, recommending state aid to a transcontinental railroad to the extent of not r than \$15,000,000, but proposing that security be taken for the advances made so that sum should not become a state charge. In other words, this idea of a loan was substit for that of a donation. (Sacramento Union, February 7-11, 1860.)

and the set of the least of the set that from a time transport of the session, was assigned to the Chris k knimer. I meet not the Mouse, and he the control of the date of the presentable property of Juliah and a SEE II THE CHILDREN TO THE POLICE SEE STRUCK AS IN MAN THE PARTY. METERS IN A SERVICE OF THE HOUSE COMMANY OF THE Resignant and account of the School Parish Radional Comsize will the privilege of the floor of the Senate and outle House and manage of all the papers of the Senate committee From the present of arrestage Judah was able to watch the progress of the Family Rechand hill which his Suggest preserve international and to grade it to a remain extent. We is how that I was Juniah who procured the assent of the Kansas on the deal washing a child at it includes which required to med to meet the Umine Pacific at the 100th meridian instead of at the 1922 memilian. It was Judah also who seemed the passes of the amendment retaining for the Central Pacific the timber to meet here. Mineral lands were excepted from the and serimed to the Pacific railroads, and Judah was attend les this tianse should deprive the Central Pacific of all benefit from a large part of the lands nominally given it. It was probably Juliah, also, though this is less certain, who seemed achange in the terms of the government subsidy increasing the amount and altering the distribution so that the largest pay ments were made for the road across the Sierras and not tor the section east of the California state line, where the diffi culties of construction were less. These were important matters, and Judah should not have been permitted to urge

them from the vantage point of an official position.

Report of the chief engineer of the Central Pacific Railroad Company of California, as his operations in the Atlantic states, Sacramento, 1862. It should be added that Hontington himself was in Washington while the Act of 1864 was being debated. Come line to less time senator from California, says of Huntington's activity at this time. During the padency of this legislation [Act of 1864], C. P. Huntington spent much of his time in Wallington. Many of the amendments were suggested by him, and it have been head in the time before and his view. In former years in Sacramento we had been in the enganteeth of the Says herides. . . . I had been associated with him and others in the organization of the Central Pacific Railroad Company . . . " (Cornelius Cole, Memours, pp. 179-80.)

It is perhaps natural to ask wheth. of improper methods used by the Cent passage of the Pacific Railroad bill be to. The weight of the record is in the 1 Stanford, Judah had \$100,000 in Centr disposal to cover his expenses in the Eas' worth much, and Judah did not use all Judah made an agreement with Hon. S Hon. T. G. Phelps, according to which he parties representing the interests of the San José Railroad, the rights, grants, and Central Pacific for the portion of road beand San Francisco. This looks like an opposition in California, from which some delegation may have profited. There is no however, of any improper bargaining in conpassage of the bill, and it is probable that corruptly used. If there had been, Campbe would hardly have been naïve enough to send a in behalf of sixty-three senators and represent him for his valuable assistance in aiding the Pacific Railroad bill.

The Pacific Railroad Act

Let us now consider the terms of the federal 1862 and 1864. The Pacific Railroad Act in its signed on July 1, 1862,5 and accepted by the com dated November 1.6 Bancroft says that the caware that the assistance offered in this act was 1. The subsidy alone would not build the road, a would not subscribe on the security offered. may be, Judah arranged for the purchase of loc

^{5 12} United States Statutes 489 (1862). 6 United States v. Southern Pacific Co., Record, pp. 1654-57.

United States v. Southern Pacine Co., Record, pp. 1054-57.

nd railroad iron before he left the East, and took measures lso to secure early action by the President on the question of rauge, and on the establishment of the western base of the Sierra Nevada Mountains.⁷

In December, after Judah's departure, a bill was introduced to amend the Act of July, 1862. This measure passed the Senate but was not acted upon by the House. A year and a half later, however, a new act was passed by both houses, and became law on the 2d of July, 1864, amending the Act of 1862, and materially increasing the aid which the Central Pacific was to enjoy. To all intents and purposes the Acts of 1862 and 1864 were one piece of legislation, and will be treated as such in the analysis which follows.

Grant of Right-of-Way

What now were the advantages secured to the Central Pacific by the Acts of 1862 and 1864, and what were the obligations placed upon that company? We will take up first the advantages, not necessarily in order of importance.

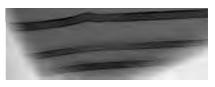
The first concession which the Central Pacific received under this legislation was the authority to complete its line from Sacramento to the eastern boundary of the state of California and thence eastward 150 miles, provided that the Union Pacific had not by that time built west to a connection with it. The company was also authorized to build west and south from Sacramento to San Francisco, or to a point nearby. The Act of 1862 had contained no limitation on construction eastward beyond the reference to a Union Pacific connection. Huntington said later that the restriction of 150

[†] Report of chief engineer, Central Pacific Railroad of California, on his operations in the Atlantic states, 1862.

^{1 13} United States Statutes 356 (1864).

Por a full digest of the Acts of 1862 and 1864, and for an account of the Congressional history involved, the reader is referred to Haney, "A Congressional History of Railways." Smator A. A. Sargent asserted in 1878 that he, Sargent, wrote the acts himself. (45th Congression, 26 Session, Congressional Record, Vol. 7, p. 2024.)

miles should not have been inse: however:



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I said to Mr. Union Pacific who that out as soon as I wanted it out. In ton . . . I saw probably every memborsenate except a few men who were in Pacific, or had a direct interest in the C. passed it through the Senate; I think we eight opposed to it. I took it over to the Stevens attended to the bill for me, and House with a vote, I think, of ninety-for thirty-three against it.¹⁰

Judah said of the clause as it stood in I conceded to the company the right to con half of the line of the Pacific Railroad. H it would be found advisable to undertake about 300 miles easterly from the state line

In addition to the authority to build, the was given a free right-of-way 400 feet wide ment lands, besides necessary grounds for shops, etc., with the privilege of taking eart and other materials from the public lands adjact said road for purposes of construction.

Land Grant

The company was also granted ten alternamile of public land on each side of the railrothereof, and within the limits of 20 miles on earnoad. The government undertook to extinguish but did not include in its grant mineral lands exiron lands, or lands sold, reserved, or otherwise

¹⁰ Huntington manuscript, pp. 78–79. The act referred to appears in Statutes 78–79.

¹¹ Report of the chief engineer on the preliminary survey of the Cen \$2 road, etc., October 22, 1862.

he United States, or lands to which a pre-emption, homed, swamp-land, or other lawful claim might have attached he time the line of the road should have been definitely d. The grant was thus not of a specified number of acres, no compensation was provided to the company for lands ch might prove to be occupied; but in order to prevent ulation and in a measure to safeguard the company's rests, it was provided that at any time after the passage of act, and before July 1, 1865, without waiting for definite tion of the road, the company might designate the general e and file a map, whereupon the Secretary of the Interior ald cause the lands within 25 miles of said route to be drawn from pre-emption, private entry, and sale. When portion of the route should be finally located, the Secretary he Interior should cause the granted lands to be surveyed set off so far as might be necessary. As a matter of fact, ah filed his map and general designation before he left shington in 1862. Lands were to be conveyed to the pany on completion of stretches of 20 consecutive miles. special clause, never enforced, provided that all granted is not sold or disposed of by the company within three rs after the entire road should have been completed, should subject to settlement and pre-emption like other lands, at a x not exceeding \$1.25 per acre to be paid to the company.

vernment Subsidy

In the way of a subsidy, Congress ordered the Secretary he Treasury to issue to the Central Pacific, United States er cent 30-year bonds, in amounts varying from \$16,000 48,000 per mile. The subsidy of \$48,000 was granted for 150 miles east of the western base of the Sierra Nevada ntains, this being the most mountainous and difficult portof the road. East of this section of line the Central ic bond subsidy was to be \$32,000 per mile, but west of

it, it was to be only \$16,000 per mile. It was the understanding of the company that these bonds were not redeemable by the government before maturity, and that until that time the interest charges were to be taken care of by the government. This last point was later the subject of litigation in which the company's contention was sustained. The subsidy offered by the government inured to the company on the completion of sections of 20 consecutive miles over the greater part of the road, except that bonds might be issued up to two-thirds of the value of uncompleted work when the chief engineer of the company should certify that a certain proportion of the work required to prepare the road for its superstructure had been done.

Company's Obligations

In return for these very considerable privileges, the demands made upon the Central Pacific do not seem to have been excessive. First and foremost, the company was required to build its road at the rate of 25 miles each year after filing its assent to the provisions of the act, and to reach the state line within four years. The track upon the entire line was to be of a uniform width, to be determined by the President of the United States, so that, when completed, cars could be run from the Missouri River to the Pacific Coast. The grades and curves were not to exceed the maximum grades and curves of the Baltimore and Ohio Railroad, and the whole line of railroad and branches, Union Pacific and Central Pacific included, was to be operated and used for all purposes of communication, travel, and transportation, so far as the public and the government were concerned, as one connected, continuous line.

In the second place, demand was made that the company should pay the principal of the government bonds at maturity,

¹² United States v. Union Pacific, 91 U. S. 72 (1875).

and should meanwhile make certain payments on account of principal and interest. The following section taken from the Act of 1862 shows that there is no basis for the contention sometimes made that the government originally expected no repayment of its loan.

And be it further enacted that the grants aforesaid are made upon condition that said Company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mail, troops and munitions of war, supplies and public stores upon said railroad for the Government, whenever required to do so by any department thereof, and that the department shall at all times have the preference in the use of the same for all the purposes aforesaid (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service), and all compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. Said Company may also pay the United States, wholly or in part, in the same or other bonds, treasury notes, or other evidences of debt against the United States, to be allowed at par, and after said road is completed, until said bonds and interest are paid, at least five per-centum of the net earnings of said road shall also be annually applied to the payment hereof.13

In 1864 this section was changed by requiring only onehalf of the compensation for services rendered to the government to be applied to the payment of bonds issued by the government in aid of construction, but the declaration that the bonds should be paid was not altered. Not only was this true, but the government demanded security for repayment.— In 1862 it declared that the issue of said bonds and delivery to the company should *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with

^{11 12} United States Statutes 489 (1862), Sec. 6.

the rolling stock, fixtures, and property of every kind and description. In 1864 the lien of the United States bonds was subordinated to that of a second mortgage, but the idea of some security was preserved.

Third, the government reserved the right to reduce the rates of fare upon the Central Pacific, as well as upon the other railroads provided for in the Act of 1862, as unreasonable, when net earnings should exceed 10 per cent upon cost, exclusive of the 5 per cent to be paid to the United States.

Fourth and last, an annual report was asked for, which was to set forth earnings, expenses, indebtedness, the amount of stock subscribed, a description of the lines of road surveyed, and the names and residences of the stockholders.

Amounts Granted

It is evident that these demands were very moderate indeed. Under the provisions of the Acts of 1862 and 1864, the Central Pacific and Western Pacific railroads received \$27.855,680 in government bonds, and 10,081,945.18 acres in public lands (up to June 30, 1920). From the bonds the companies realized \$20,735,000, or \$24,092 per mile. From the lands, the Central Pacific received, up to June 30, 1919, the approximate sum of \$17,430,000, about equally divided between receipts from sales and receipts from other sources, including leases, stumpage, timber, and miscellaneous. expenses of the land department may be estimated at \$7,000,-000, and the net return therefore was \$10,000,000. vield of the bond subsidy not only exceeded the returns from the granted lands, but the subsidy was ten times the aid received from the state and counties put together, and of course many times the contribution of the partners themselves. What was almost as important, the grant of this federal assistance at once raised the company's credit, so that it could sell its own first mortgage bonds. The sale of company bonds yielded \$20,750,000, or a total of \$41,485,000, for government and company bonds together, directly attributable to federal aid, and almost immediately available.

From the point of view of serviceability, the land grant referred to in the Pacific Railroad legislation was much less important than the subsidy in bonds. Government lands along the line of the Central Pacific had no value until the road was completed, nor even then until the slow process of settlement had filled up in a measure the territory through which the railroad ran. Nor was the amount of the grant so definite as to make it a satisfactory basis for credit, although land grant bonds were sold in and after 1870. The theoretical grant was twenty sections, of 12,800 acres to the mile. The grant did not, however, follow the sinuosities in the track, so that in the mountain sections it was quite possible for two miles of railroad to be constructed and yet only one mile of land grant to be obtained.

Not only was this true, but the exceptions provided for in the legislation were important. The records show that the saving clauses in the statutes, coupled with the inaccessibility of some of the lands within the nominal grants, and the differences between the actual mileage of the railroad and the mileage upon which land was awarded, reduced the area passing to the railroad by many hundred thousand acres. In 7 California the Central Pacific was entitled to a nominal grant of 1,843,000 acres, at the rate of twenty sections per mile for a mileage of 144 miles. At least 887,000 acres of this amount were known to be lost to the grant as early as 1895, while the final adjustment will scarcely secure for the company more than half the amount originally expected. In Nevada the company's losses approximated one-ninth and in Utah onequarter of the nominal grant. The losses on the California and Oregon up to 1897 were 962,703 acres out of a total grant of 3,266,729 acres, but in this case the law permitted

the point in the Sacramento Valley where the ascent commenced would clear the most difficult and mountainous portion of the Sierra Nevadas and reach the valley on the eastern slope, then it seemed reasonable that the base of the Sierra Nevadas should be taken as beginning at that point. He recommended the place where the line of the Central Pacific crossed Arcade Creek as such a point.

The same place was selected by the Surveyor-General of the state of California, on the principle that the two extremities of the 150 miles upon which the maximum subsidy was to be given should rest upon corresponding grades, the one to the west, the other to the east of the mountains. These two recommendations seem to have been controlling, although the United States Surveyor-General for California suggested a location further east, where the ascending grade of the Sierras became plainly perceptible to the naked eye. Since this interpretation of the act increased the bond subsidy which the Central Pacific was to receive, the company naturally made no objection.

Conditions of Land Grant

In regard to the land grant, the Land Office was called on for a great many decisions after 1864, mostly in interpretation of the exemptions carried in the federal legislation. The cases were not all brought by or against the Central Pacific, but they nevertheless affected its rights.

In general, the grant of land to the Central Pacific was held to be an absolute unconditional present grant. The route not being at the time determined, the grant was in the nature of a float, and the title did not attach to any specific sections until they were capable of identification. When once identified, however, the title attached to specific sections as of the date of the grant, except in the case of sections which were

¹⁶ United States Pacific Railway Commission, pp. 3569-70.

specifically reserved.17 While the grant was a present grant, it conveyed only land which was public land, that is to say, portions of the public domain which were open to sale or other disposition under general laws at the time the grant was made. This definition did not include lands which became public subsequent to the date of the grant, or lands reserved by competent authority for any purpose or in any manner, whether or not the reservations were mentioned in the granting act.18

It followed from the theory that the land grant was a present grant, that a valid homestead entry existing at the date of the passage of the Land Grant Act excepted the land covered from the area granted to the railroad even though the entry were canceled prior to the definite location of the railroad line.19 The same effect was produced by an uncanceled and unexpired pre-emption claim, or by any other valid claim or reservation which was alive at the date of approval of the granting act. In cases like these the cancellation of the claim restored the land in question to the public domain, but did not operate to replace it within the railroad grant.20

Yet, although the theory that the grant took effect as of the date of the granting act was strictly applied against the railroad, the settler enjoyed the protection of a milder rule laid down in the statute itself. Section 7 of the Act of 1862 required the railroad company to designate the general route of the road within a stated time, and instructed the Secretary of the Interior thereupon to withdraw lands within 15 miles changed to 25 miles in 1864) of the route designated from pre-emption, private entry, and sale; and Section 3 provided that the land grant to the railroad should not include lands to which a pre-emption or homestead claim might have attached

[&]quot;United States v. Southern Pacific Railroad Co., 146 U. S. 570, 593 (1892). ¹⁴ Newhall v. Sanger, 92 U. S. 761 (1875).

^{**} Kanms Pacific v. Dunmeyer, 113 U. S. 629 (1885).

*** Hastings and D. R. Co. v. Whitney, 132 U. S. 357 (1889); Whitney v. Taylor, 158
U.S. 85, 92 (1895); Bardon v. Northern Pacific, 145 U. S. 535 (1892).

at the time the line of road was definitely fixed. Pre-emption or homestead claims might therefore be established after the passage of the land-grant statute, provided that this was done before the lands were withdrawn from settlement.²¹ Indeed, the Secretary of the Interior ruled that settlement and occupation exempted land from the grant even though the settler failed formally to assert his claim.²² After the lands embraced in the grant were withdrawn from pre-emption, private entry, and sale, a settler could not secure acreage by subsequent occupation, although he settled prior to the time when the Central Pacific acquired actual title.

Losses Due to Spanish and Mexican Grants

A class of cases distinct from those of ordinary settlers arose in connection with Spanish and Mexican grants. It appeared that when California became a state, the Spanish and Mexican grants were both indefinite and unrecorded, so that it was not known just what lands were public domain and what lands were private. On March 3, 1861, Congress passed an act creating a Board of Land Commissioners in California, and provided that all persons claiming land in California by virtue of any right or title derived from either the Spanish or Mexican governments, should present the same to the board within two years for adjudication, with privilege of appeal to the United States courts.²³

Following this act, many claims were presented. The United States Supreme Court held that land within the boundaries of alleged Spanish or Mexican lands which were subjudice at the time the Secretary of the Interior ordered the withdrawal of lands along the route of the road, were not embraced in the land granted to the company. There were

³¹ Menotti v. Dillon, 167 U. S. 703 (1897).

³² Central Pacific Railroad case, 3 L. D. 264.

^{33 9} United States Statutes 631 (1851).

nany sections of California lands which were sub judice on August 2, 1862, and this fact caused serious loss to the Central Pacific in its grant in California. In addition to losses from the cause just mentioned, the company suffered from the indefiniteness of the Spanish and Mexican grants, and from the delay in determining the extent and boundaries of the Spanish and Mexican claims.

Policy Toward Settlers

It was the policy of the company to invite settlers upon its lands before the lands were patented, and then to select and apply for patents on lands which settlers desired to buy.24 Sometimes, indeed, the company leased unpatented land to cattlemen at low rates, in spite of its lack of title. Actual transfers were made by bargain and sale deed warranting to the purchaser the entire title acquired by the company from the federal government. The prices ranged from \$2.50 to \$20 per acre, but little was sold at a price above \$5. Usually land covered with tall timber was held at \$5, and that covered with pine at \$10. The actual cost to the purchaser was slightly greater, because he was compelled to pay for the acknowledgment of three signatures to the deed, and for the recording, amounting in all to perhaps \$5.50 or \$6. On the other hand, the company granted as much as five years' credit, and through the practice of selling land seekers' tickets from San Francisco, Sacramento, San José, Lathrop, and Los Angeles to points along the line of railroad, which were accepted as cash on the purchaser's first payment for his land, it practically furnished free transportation for California terminals to the sections bought. This last practice, at least, was in force on the Southern Pacific in 1880, and presumably on the Central Pacific also.

All in all, the Central Pacific does not seem to have at-

MUnited States Pacific Railway Commission, p. 2412, testimony W. H. Mills.

tempted to withhold its lands from the market, and there no evidence that the settlement of the coast was retarded the inability of prospective settlers to get land. The p which the Central Pacific could exact was held in check by retention by the government of alternate sections, while large sums which the company spent for advertising redoun to the advantage of the government as well as to that of railroad. To the general statement that the Central Pac was not unreasonably grasping in its capacity as landed prietor, exception must be made of its treatment of tin lands in the North, of which mention will be made elsewh

The land-grant policy of the government was a mistabut it was a mistake because it unnecessarily enriched a men by securing to them an extravagant share in the unear increment due to the development of the state of Califor without aiding them materially in the task which the government most desired them to perform—not because the gran endeavored to build up landed estates or to discourage growth of population. Compared with the land grant, bond subsidy was distinctly the better policy.

CHAPTER IV

PROGRESS OF CONSTRUCTION—CONSTRUCTION COMPANIES

commencement of Construction

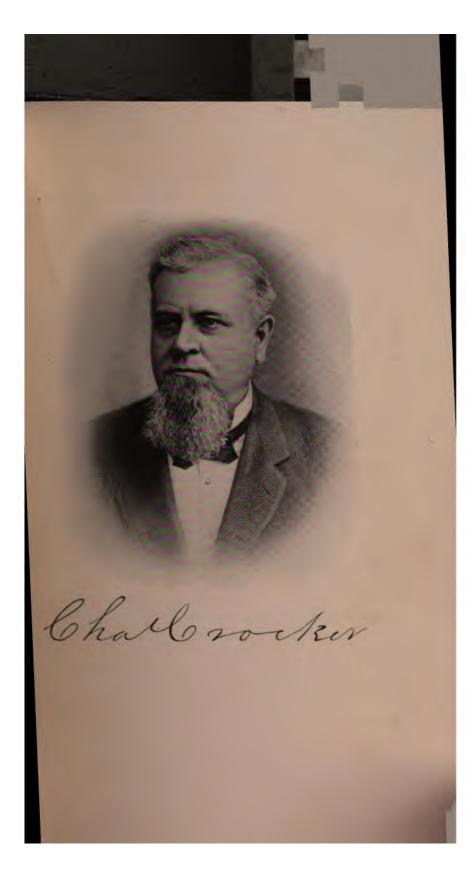
The construction of the Central Pacific Railroad of Caliornia was begun at Sacramento on the 8th of January, 1863. he day the work started was rainy and calculated to damp the ost cheerful of spirits. There was, however, a brass band, inners, flags, speeches, and a crowd standing on bundles of ay near the levee to keep its feet dry. Two wagon-loads of orth were driven up before the platform on which were gathred the dignitaries present, and Stanford, then governor of alifornia, seized a shovel and deposited the first earth for the inbankment. The enthusiastic Charles Crocker promptly alled for nine cheers. The sun smiled brightly, and everyody, for the moment at least, felt happy that after so many ears of dreaming, they now saw with their own eyes the actual commencement of a Pacific railroad.¹

It was fortunate that Mr. Crocker was enthusiastic, for the difficulties which the Central Pacific had to overcome were serious. The chief difficulties were as follows:

Gradients. Some reference has been made in the previous chapter to the elevations which the Central Pacific had to surmount. The highest point which the company had to reach was Summit Station, 105 miles from Sacramento, at an altitude of 7,042 feet. Since Sacramento lay only 56 feet above the level, to reach this point required an ascent of 6,986 feet

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¹⁸⁶³ to 1913 "An Account of the Ceremonies Attending the Inauguration of the Work Construction of the Central Pacific." Interesting details of the course of construction of Contral and Union Pacific railroads are given in Carter, "When Railroads Were New," im Sabin, "Building the Pacific Railway."



In addition to the difficulties caused by snow, it must be remembered that the frozen earth, though uncovered, was difficult to work. Not only was it necessary to blast out material which could have been cheaply moved at a more favorable time, but, when piled into embankments, the ground settled in the spring as the frost was leaving, and required constant attention.⁷

All the various obstacles raised by climate would have been minimized if construction had proceeded more slowly. Indeed, Mr. Hood and Mr. Strobridge, engineers in charge of construction, agreed that if the Central Pacific had been built at less speed, and as such railways are usually constructed, the expense would have been from 70 to 75 per cent less than the actual cost. The saving would not have been due altogether to the abandonment of winter construction, but this would have been an important factor. The Central Pacific, however, preferred speed to economy, in the hope of outstripping the Union Pacific in the race for the business of Nevada, and for the subsidies and land grants offered by Congress.

Supplies. A further obstacle in the way of successful construction of the Central Pacific lay in the difficulty of getting supplies. Wood and stone could be procured in the mountains, but iron, coal, and manufactured articles of all sorts, including rails, locomotives, and cars, were brought from Sacramento or from the East. Prices in general were high, in part because of the war. The first ten locomotives purchased by the Central Pacific Railway cost upwards of \$191,000; the second ten upwards of \$215,000. Iron rails cost \$91.70 per ton at the mills. The price of powder increased from \$2.25 to \$6 during the period of construction. The cost of food was exorbitant. Hay was worth \$100 a ton out upon the line, and

⁷ United States Pacific Railway Commission, p. 2579, statement William Hood; pp. 2580-81, 3150, statement J. H. Strobridge; pp. 2576-77, statement L. M. Clement; p. 3055, testimony E. H. Miller; pp. 2581-82, statement Arthur Brown.

outs about 14 or 15 cents a pound. Stanford says he sold one potato for \$2.50.8

In the cases cited, high cost of transportation often played an important part in determining the final prices, and in general, indeed, the expense of moving supplies was comparable with the initial cost. Among many possible illustrations one may mention the fact that shipments of rails via the Isthmus of Panama as late as 1868 cost, for transportation alone, \$51.97 per ton, making the total cost of the rail delivered at Sacramento, \$143.67, not including charges for transfer from ships at San Francisco, nor for transportation up the Sacramento River. Nor was this freight rate high when compared with the cost of wagon hauls in the mountains, when material had to be transported away from the finished track. Mr. Huntington tells of meeting some teams with ties in the Wahsatch Mountains. He continues:

They had seven ties on that wagon. I asked where they were hauled from, and they said from a certain canon. They said it took three days to get a load up to the top of the Wahsatch Mountains and to get back to their work. I asked them what they had a day for their teams, and they said \$10. This would make the cost of each tie more than \$6. I passed tack that way in the night in January, and I saw a large fire burning near the Wahsatch summit, and I stopped to look at it. They had, I think, some twenty to twenty-five ties burning. They said it was so fearfully cold they could not stand it without having a fire to warm themselves.

Fortunately for the company, the cost of labor on the Central Pacific and transcontinental lines does not seem to have been excessive. The total number of men employed ranged from 1,200 in 1864, to 14,000 or 14,500 in 1867, when construction was at its height. White men, of whom there were

United States Pacific Railway Commission. p. 2523, testimony Leland Stanford. On the other hand, there were abundant supplies of timber along the line, and the price of machinery declined after the war.

some 2,500 or 3,000 in 1867, received \$35 a month and board as common laborers, and from \$3 to \$5 a day as skilled mechanics. Most of the track laborers, however, were Chinamen, who were paid \$35 a month, and boarded themselves. These Chinamen proved reliable and willing workers, and, because of his experience with them, it was with distinct reluctance that Mr. Stanford in later years allied himself with the friends of Chinese exclusion. 10

Letting of Construction Contracts

Such obstacles as these made the task upon which the Huntington-Stanford group had entered a formidable one indeed. Just how the difficulties should be met, Mr. Huntington himself did not know. Arrangements were first made with small contractors for the building of stretches of road from Sacramento towards Newcastle. Charles Crocker resigned his directorship in 1862 and took the first contract for 18 miles. Then Cyrus Collins and Brothers got a contract which they did not complete, and other contracts were let to Turton, Knox and Ryan, C. D. Bates, and S. D. Smith. Mr. Crocker says the people raised a hue and cry saying that he was a favored contractor, so that the directors told him that he could not have more than two miles of the road between the 18th and

Number of Men Employed in Central Pacific Construction, 1864-69, and Rate of Pay

Year	Number of Chinamen	Rate of pay	Number of White Men	Rate of pay
1864 1865 1866 1867 1868 1869	Very few 7,000 11,000 11,000 5,000-6,000 5,000	\$30 a month 35 " " 35 " "	1,200 2,500 2,500-3,000 2,500-3,000 2,000-3,000 1,500-1,600	\$30 a month 35 " " 35 " "

To Huntington was always openly in favor of unrestricted Chinese immigration. He said that exclusion deprived the United States of tractable and cheap labor, which was needed to build up the desert places of the country. He believed the fanatical hostility is the Chinese was limited to California, where, he asserted, the Irish Catholics swung the balance of power. (San Francisco Examiner, January 4, 1889.)

⁹ United States Pacific Railway Commission, pp. 3139-41, testimony J. H. Strobridge. The following table is prepared from Mr. Strobridge's testimony:

30th sections.¹¹ He adds that the independent contractors got to bidding against each other for laborers, and thus put up the price. Huntington was told that the smaller contractors quarreled with each other, and tried to "scoop" labor from each other; while Mr. Stanford says that the small contractors did not finish their sections in consecutive order, that they did not hurry, and could not be sufficiently controlled.¹³

At any rate, after the completion of section 29, no more contracts were let to anyone except Charles Crocker and Company. According to the associates, it was not so much a question of price as one of organization and control. This may be true, or it may be that the associates finally decided that it would be easier to make a satisfactory profit out of government subsidies by doing the building themselves, than by beating down subcontractors to the lowest possible contract price. It should be noticed that the change in policy referred to did not take place until 1864, when the federal Act of 1862 had been passed and that of 1864 was imminent, and that the Central Pacific did not select any single contractor, but gave all its work to Charles Crocker, one of the original associates.

Contracts with Crocker

The first contract with Charles Crocker, covering sections 1 to 18, provided for a lump sum payment of \$400,000, of which \$250,000 was to be in cash, \$100,000 in bonds of the company, and \$50,000 in capital stock. This was also the type of contract made with other contractors up to section 30, although the amounts paid varied. At least one bill for extras

13 Ibid., pp. 2621-26, testimony Leland Stanford.

[&]quot;United States Pacific Railway Commission, p. 3642, testimony Charles Crocker. A letter from Mr. Judah to Dr. Strong, dated July 10, 1863, suggests that it was Judah's influence which prevented Crocker from building sections 19 to 30. Judah wrote: "I have had a big row and fight on the contract question, and although I had to fight alone, carried my point and prevented a certain gentleman from becoming a further contractor on the Central Pacific Railroad at present." (Jbid., p. 2966, testimony Strong.) This was probably only one of a number of differences of opinion between the Stanford-Huntington group and the croginal promoters of the Central Pacific, led by Judah. It was only after Judah's death that the first-named interests were able to dominate the situation completely.

[&]quot; United States Pacific Railway Commission, p. 3769, testimony Collis P. Huntington.

was allowed Mr. Crocker. Sections 30 and 31 were built by Crocker, and after these were completed he was permitted to continue without a written contract.

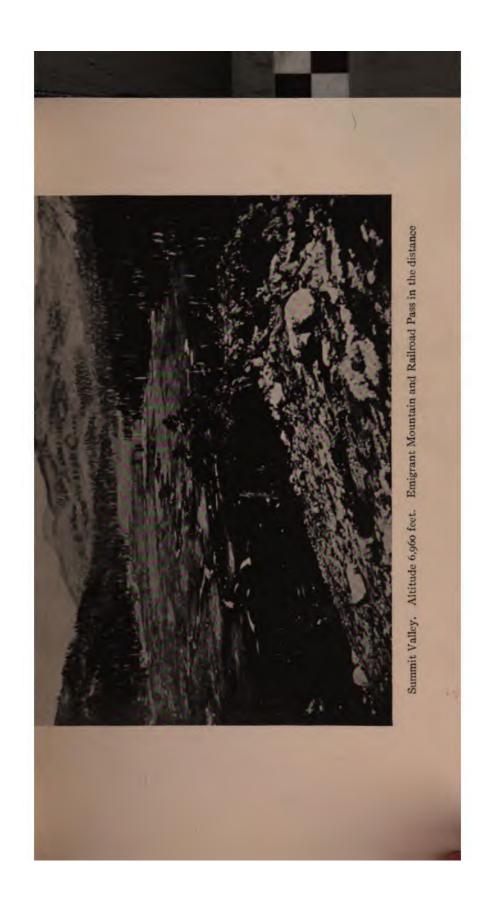
In June, 1865, Mr. Hopkins made a report to the president and directors of the Central Pacific upon the general subject of contracts. In this report Hopkins dwelt upon the necessity of rapid construction for the purpose of capturing the passenger traffic between Sacramento and Virginia City; and also in order to comply with the acts of Congress and the state legislature, which required rapid construction of the road. Persons of large capital, he said, seemed unwilling to bind themselves to construct the road as rapidly as necessary. Charles Crocker. and Company, on the other hand, had pushed and were pushing the work with extraordinary vigor and success, and had in all cases complied with the orders and directions of the officers of the company. He recommended, therefore, that arrangements be continued with that firm, at rates specified in an accompanying resolution.¹⁴ The directors thereupon adopted this report, and resolved as follows:

Resolved and ordered that Charles Crocker and Company be allowed and paid for all work done and material furnished, or which may hereafter be done and furnished, until the further order of the Board of Directors, in the construction of the railroad of the Company, from section 43 eastward, subject to and in accordance with the terms, conditions and stipulations set forth in the contract with said Charles Crocker and Company, dated September 19, 1863, except so far as the same are modified or changed by this order, at the following rates and prices, and in accordance with the following classification, to-wit:

[Here are inserted the rates for clearing and grubbing, and excavation in various kinds of rock, etc.]

The payments to be made monthly, according to the monthly

¹⁴ United States Pacific Railway Commission, p. 3048, testimony B. H. Miller. For a general discussion of the relative advisability of construction by contract as opposed to construction by the Central Pacific itself, see an earlier report by Stanford, Hopkins, and Miller. (*Ibid.*, pp. 3045-46.) This report made the point that the letting of contracts tes responsible contractor would raise the credit of the railroad.





estimates, five-eighths thereof in gold coin, and the remaining three-eighths in the capital stock of the Company, at the rate of two dollars of capital stock for each one dollar of said three-eighths of said estimate, with the privilege of paying said three-eighths in gold coin in lieu of said stock, at the election of said Company, to be made at the time of such payment.

Payments in Cash and Stock

The essence of this arrangement was that Mr. Crocker was to go ahead indefinitely and that he was to be paid not a given sum per mile, but at a given rate of so much per unit for each class of work which he might find it necessary to do. Payments were to be made in cash, and also up to a certain per cent in stock, taken at a valuation of 50 cents on the dollar. Under date of April 16, 1866, Mr. Crocker requested that stock be given him at a valuation of 30 cents on the dollar, instead of 50 cents, and this was agreed to.¹⁵

The change from a 50-cent to a 30-cent valuation was made ostensibly because Crocker and Company could not realize more than 30 cents on the stock which they were receiving. As a matter of fact, Crocker could not sell Central Pacific stock at any price, so that the alteration of the contract merely increased his chance for a speculative gain, to be realized after construction should have been completed. Mr. Stanford has said that the directors did not care very much what the prices were, so long as the work was done. Under the contract, the Central Pacific Railroad itself, through Mr. Huntington, purchased locomotives and cars for Crocker and Company, and charged for them at cost.16 Bonds were also sent from San Francisco to Huntington, but it was Huntington's impression that they were sold for the company, not for the contractors. In any case, Huntington rendered an account every month of what he had done, and Hopkins settled with the company or

United States Pacific Railway Commission, p. 3436.
 Milbid., p. 3157, testimony J. H. Strobridge.

with the contractors, as the case might be.¹⁷ Describing the situation at a later date, Crocker said, "It was decided that I should go on immediately and see what I could do. I did go on until we got tied up in suits and I had to stop. I could not get any money. They had all the money I had, and all I could borrow. That was the time that I would have been very glad to take a clean shirt, lose all I had, and quit."

The total payments made to Charles Crocker or to Charles Crocker and Company, under the various arrangements just described, were as follows: 18

TOTAL AMOUNT PAID CHARLES CROCKER AND COMPANY ON HIS CONTRACT AND FOR EXTRA WORK

Cash, or its equivalent, including material fur-	
nished him	\$ 8,853,117.93
Bonds, taken at par	100,000.00
Stock, taken at 50 cents on the dollar	2,696,200.00
Stock, taken at 30 cents on the dollar	11,947,530.00
Stock, taken at par value	57,980.22
Total	\$23,654,828.15

If we take the cash payments at par and the bonds at 75, this would make the tidy sum of \$69,210 per mile on 129 miles. When we bear in mind that Crocker accepted the contract for the first 18 miles out of Sacramento at a price including a cash payment of only \$13,800 per mile, and that the arrangements with the small contractors who followed him were distinctly less favorable, it is possible to say with some confidence that the profits on the Crocker contracts were considerable. Whatever they were, Mr. Crocker shared them with his associates by

¹⁷ The actual cost of the whole work to the Central Pacific depended upon Mr. Crocker's reports upon the work which he did. There is no evidence that the company exercised any supervision over these reports, although it was to the advantage of the construction company to describe as much of the work as possible as heavy; but on the other hand. Mr. Crocker's engineers testified that Crocker never attempted to influence them in their estimates. (United States Pacific Railway Commission, p. 3207, testimony L. Clement.)

18 United States Pacific Railway Commission, p. 3511, testimony Richard F. Stevens.

ing at a later date \$14,000,000 in Central Pacific stock treasury of the Contract and Finance Company, sed in the next section) for the benefit of the stock-of that organization. Inasmuch as Stanford was one principal stockholders in the Contract and Finance ny, his later categorical denial before the United States Railway Commission that he had participated in the of the Crocker contracts makes interesting reading. 19

act and Finance Company"

en the Central Pacific approached the state line of Caliin the latter part of 1867, the associates told Mr. r that they did not think it best for him to go any They said they wanted more capital—they wanted to heavy men in the enterprise.20 Crocker had not been ful in persuading capitalists to go in with him, while it lieved that investors were deterred from taking stock in ntral Pacific by reason of the liability which would be incurred under California law. Either Huntington or rd-both claim the credit-conceived the idea that there be an advantage in organizing a corporation to undere construction work. The subject was mentioned on the n of one of Huntington's visits to California, although pany was formed while Huntington was in the East.21 me finally decided upon for the new corporation was that ntract and Finance Company." Articles of association ed in October, 1867. W. E. Brown, Theodore J. Millid B. R. Crocker attended to the details. Milliken was a nt in Sacramento, and the other two were connected e Central Pacific.

ording to its articles of incorporation, the Contract and

ted States Pacific Railway Commission, p. 2636, testimony Leland Stanford. £., p. 3661, testimony Charles Crocker. ton case, pp. 266-68, deposition of Collis P. Huntington.

Finance Company was formed for the purpose of engaging in and carrying on the business of constructing, purchasing, leasing, selling, holding, maintaining, operating, and repairing railroads, wagon and transit roads, steamboats, vessels, telegraph lines, and rolling stock of railroads; the purchasing, holding, hypothecating, and selling of bonds and stocks issued by railroad and other companies or corporations; the purchasing and using of iron and other materials for railroad and telegraph lines; the borrowing and loaning of money; the conducting of an express and stage business, and any and all other kinds of business connected with or pertaining to railroads and telegraph lines; the transportation of persons and property, on land and water; and the purchasing, holding, leasing, and selling of real estate of all kinds. The capital stock was set at \$5,000,000.

Failure to Attract Outside Capital

It is the unanimous testimony of the associates that the real and only reason for forming the Contract and Finance Company was that outside capital might be induced to come in. Huntington says that when the company was organized, he went with new energy to capitalists in the East to induce them to take a share in the risks and profits of construction. Yet from the point of view of attracting outside capital, the Contract and Finance Company was a complete failure. William and Commodore Garrison, of New York, A. A. Selover, Moses Taylor, and William E. Dodge, among others, considered the matter, but all concluded that the risk was too great. In California, Stanford applied to D. O. Mills, W. C. Ralston, Haggin and Tevis, Michael Reese-in short, to everybody whom he thought he might possibly induce to take an interestbut in vain.22 The result of the failure to secure outside subscriptions to the Contract and Finance Company was that

²² United States Pacific Railway Commission, p. 2640, testimony Leland Stanford.

the associates had to take up the stock of that company themselves. Crocker was made president at an early date, and apparently took the bulk of the stock in the first instance. Then, when it was evident that no outside investors would come in, he put the stock back, and Stanford, Hopkins, Huntington, and E. B. Crocker took equal shares with him—each subscribing for 10,000 shares out of the 50,000 outstanding.²³ Later a little stock was disposed of to outsiders, but when the Contract and Finance Company got into the courts the associates bought this back.

Throughout the whole life of the Contract and Finance Company the stockholders were the same men who held the bulk of the stock of the Central Pacific Railroad. Contracts between the finance company and the railroad company were therefore made by the associates in one capacity, with themselves in another capacity, a situation unfortunately not unique in the history of American railroad building. An unusual feature of the arrangement, however, which was common to arrangements with other construction companies formed by the associates, was that the funds of the Contract and Finance Company, over and above the sums received from the Central Pacific, were derived from loans to the company by its stockholders and not from payments on the stock subscribed. There is no evidence that Hopkins, Stanford, Huntington, or either of the Crockers paid a cent in cash on their subscriptions. Instead, they gave their notes. To provide the Contract and Finance Company with funds, they deposited money, sometimes more and sometimes less, paying interest on their notes, and receiving credit for interest on their balances, each partner as a rule putting in all the funds which he could spare, and having an individual account kept of his transactions. The Contract and Finance Company was, therefore, always heavily in debt, although the debt was owed to its own stockholders.

²¹ Ibid., p. 3661, testimony Charles Crocker; p. 2637, testimony Leland Stanford.

The advantages of this arrangement would seem to be two; first, that it concealed effectively the profits which the company was making; and second, that it did not limit any stockholder to a proportionate share in the burdens and gains of the undertaking. If any of the associates desired to participate more heavily than his friends, or less heavily, he could do so. Such a privilege was probably not important before 1869, but it became so later.

Contracts with Construction Company

A word may now be said about the contracts which the Contract and Finance Company secured. Under date of December 3, 1867, Mr. Stanford, as president of the Central Pacific, reported to his directors that he had made a contract for the construction and equipment of the railway and telegraph line of the company lying east of the eastern boundary of the line of California, and presented a draft of the contract, which the directors approved.24 Leland Stanford, E. B. Crocker, Mark Hopkins, and E. H. Miller, Jr., were present and voted. Mr. Miller explains that he did not understand at the time who the owners of the Contract and Finance Company were, and that nothing was said about it at the meeting. The contract provided that the Contract and Finance Company should build the road of the Central Pacific from the state line. eastward, 552 miles. It was to grade the road, build the bridges, lay the track, build and complete a telegraph line, furnish telegraph offices and instruments, furnish rails, ties, buildings, roundhouses, turntables, and a specified number of engines and cars and running material per mile. On its part, the Central Pacific agreed to pay \$86,000 per mile, half in cash and half in Central Pacific stock, and in practice the Central Pacific provided the equipment and the iron, charging them to the Contract and Finance Company at cost. This statement

²⁴ United States Pacific Railway Commission, pp. 3436-37-

relative to the terms of the contract with the construction company is made on the strength of the recollections of parties interested, 25 for the actual contract is one of the missing documents characteristic of Central Pacific history. Stanford describes the contract as an exhaustive one. That is to say, the Central Pacific turned over all it had and the Contract and Finance Company built the road and got the profits, if there were any.

The apparent advantages of an arrangement with a construction company as compared with those of construction by the Central Pacific itself, were those connected with specialization of the work. A company which does nothing but construction and which does that all the time, may be expected to have a force more highly trained in this particular grade of work, and a more abundant supply of tools and material than an organization which builds railroads only occasionally. The infortunate necessity of hiring men for each new job and discharging them at the completion of the job is avoided. In the case of the Central Pacific this advantage was somewhat illusory, it is true, for the reason that the Contract and Finance Company on its first contract, whatever might have been the fact later, could scarcely have had an advantage over the railroad; and as for tools, the Contract and Finance Company had no machine tools at all at the beginning, and had to rely on the railroad not only for cars and engines to transport its men, but for equipment for large construction of any sort. The real reason for using a construction company in this case was a financial and not an operating one.

Profits of Construction

Much has been said about the profits of the Contract and Finance Company. Here, again, books are missing, having

United States Pacific Railway Commission, p. 2897, testimony W. E. Brown; p. 3062, estimony E. H. Miller; pp. 3511-20, testimony R. F. Stevens.

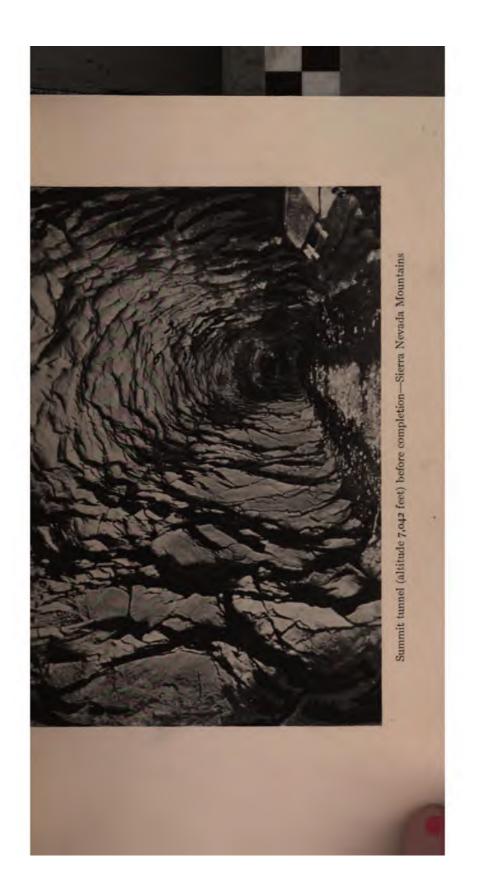
been packed into boxes by the industrious Mark Hopkins in 1873, and never again produced.26 A man named John Miller. one-time secretary of the Contract and Finance Company, and defaulter to the alleged extent of \$900,000 at a subsequent period, was in possession of transcripts from these books, if we may believe his statement; but even these transcripts disappeared, if indeed they ever existed.27 We do not know, therefore, how much construction cost the Contract and Finance Company, and we cannot calculate with any accuracy the profit obtained.

It does appear that the work done by the Contract and Finance Company cost the Central Pacific, in all \$23,736,000 in cash and the same amount in capital stock.28 If we add to this \$100,000 in cash and \$2,000,000 in bonds paid to the Union Pacific for the stretch of land from Promontory Point to a point five miles west of Ogden, and \$1,072,874.79 for snowsheds and other extra work performed in 1870, we have a total of \$51,544,874.79, of which \$24,908,874.79 was in cash. Taken in connection with the Crocker contracts, this makes an aggregate of \$33,761,992.72 in cash, \$3,000,000 in bonds, and \$38,437,710.22 in stock. It was the judgment of the United States Pacific Railway Commission that the total cost of building the 690 miles from Sacramento to Promontory Point, and of purchasing from the Union Pacific 471/2 miles of road from Promontory Point to the end of the Central Pacific line, 5 miles west of Ogden, did not exceed \$36,000,000. and this included 9 miles built by small contractors, the payment for which is not included in the figures just given.20

In a word, if the conclusions of the United States Pacific

United States Railway Commission, pp. 2712-17, testimony D. Z. Yost,
 Ibid., pp. 2875-92, testimony John Miller; pp. 3028-33, testimony N. Greene Curtis There is some evidence that \$6.000,000 of this cash was not strictly cash, but took the form of notes of the Central Pacific Railroad which were ultimately settled in land-6.000 bonds at \$36.50. (United States Pacific Railway Commission Report, p. 75.) Mr. Crocker says that the interest on a portion of these bonds paid his expenses on a trip to Europe. (Ibid., p. 3668, testimony Charles Crocker.)

19 United States Pacific Railway Commission Report, pp. 74-75.





Railway Commission are to be relied upon, and they were made by engineers relatively soon after the completion of the road, the builders of the Central Pacific were able to accomplish their contracts with the cash and the proceeds of the company's bonds that were turned over to them, and to retain their Central Pacific stock as a clear profit. If we compare this stock surplus with the probable cash investment in the road, taking the shares at any reasonable valuation, say at \$15 or \$20 per share, the profit does not seem excessive. If we compare it with the contributions of the associates, however, and this is the more rasonable because the associates received the full benefit of the difference between cost and receipts, it represents, on the most conservative calculation, 500 or 600 per cent for an investment which probably did not exceed \$1,000,000, over a period of six years. To this should be added the proceeds of the land grant and of the local subsidies.

The federal government seems in these matters to have & assumed the major portion of the risk, and the associates seem to have derived the profits. Nor is this point of view vitiated by the fact that the federal government was ultimately repaid its loan in full, for the reason that the repayment was not at the expense of the associates, but was made possible by a credit arising out of the earnings of the road, and represented merely a shifting of the burden of the debt due the federal authorities to the communities along the line.

Besides the completion of the main line of the Central Pacific, the Contract and Finance Company built a portion of the California and Oregon Railroad, part of the Western Pacific, and the entire San Joaquin Valley branch of the Central Pacific from Lathrop to Goshen. The arrangements between the Contract and Finance Company and Central Pacific for this work varied, but substantial additional profits were secured. In 1874, the Contract and Finance Company was dissolved. There is some dispute as to whether its assets

were divided into four or five parts, but both Stanford and Crocker have testified that their dividend consisted of approximately \$13,000,000 in Central Pacific stock, at par. 30 At the same time the stockholders of the construction company assumed its debts, amounting to perhaps \$1,600,000.81

Jo United States Pacific Railway Commission, pp. 2655-56, testimony Leland Stanford; p. 3668, testimony Charles Crocker. Mr. Huntington said in 1873 that he thought his dividend amounted to about \$1,000,000, but in 1887 he admitted that he had earlier mistaken the facts. (Ibid., pp. 4026-28, testimony C. P. Huntington.)
JI United States Pacific Railway Commission, pp. 2977-88, testimony W. B. Brown.

CHAPTER V

THE SEARCH FOR A TERMINAL

Progress of Construction

Under its various construction contracts, the Central Pacific steadily progressed, between 1863 and 1869, from Sacramento to a junction with the Union Pacific near Ogden. The official statement of the progress of construction is as follows: 1

Broke ground at Sacramento...... January 8, 1863

Laid first rail	• • • • • • • • • • • • • • • • • • • •
Sacramento to Roseville (18 miles)	
Road opened as follows:	
To Newcastle 31 miles	January, 1865
" Auburn 36 "	May 15, 1865
" Clipper Gap 42 "	June 10, 1865
" Colfax 54 "	September 4, 1865
" Secret Town	May 8, 1866
" Alta 78 "	July 10, 1866
" Cisco 94 "	November 9, 1866
" Summit	July, 1867
" State Line278 "	January, 1868
" Reno294 "	May, 1868
" Wadsworth329 "	July, 1868
(362 miles constructed in 1868)	,,,
" Monument Point667 "	April 15, 1869
" Ogden743 "	May 10, 1869
Driving last spike, and opened	,,
for business from Sacramento;	
distance San Francisco to	
Ogden, per time card883 "	May 10, 1869

^{1863-1913.} An Account of the Ceremonies Attending the Inauguration of the Work of Controling the Central Pacific. Scribner's Magasine for August, 1892, contains an active describing the completion of the Central Pacific and also a reproduction of the well-been planting, "The Joining of the Central and Union Pacific" ("The Last Spike").

Relations with Western Pacific

It has already been noted that the line from Sacramento via Stockton to San José was not part of the original plan, and that the rights, grants, and franchises of the Central Pacific in it were assigned to other parties in the course of the Congressional fight. The original assignment of December 4, 1862, was to a group of men which included Timothy Dane, the original projector, and president of the San Francisco and San José Railroad, Charles McLoughlin, and A. H. Houston. In 1864, the first assignees having waived their rights, the Central Pacific Railroad made the same assignment to the Western Pacific Railroad of California.² The Western Pacific Railroad in turn let contracts for construction to Houston and McLoughlin, but by 1867, McLoughlin had become involved in litigation regarding his contracts and asked that all arrangements between himself and the Western Pacific be canceled.³

This led the Western Pacific to enter into a contract with the Contract and Finance Company, with the result that substantially all the stock of the first-named corporation came into the hands of the Huntington group. McLoughlin retained the federal land grant; the federal subsidy, however, of \$16,000 per mile, reverted to the Western Pacific as did the local subsidies, and through it passed to the Contract and Finance Company. The railroad from Sacramento to San José was opened September 15, 1869; on June 22, 1870, the Central Pacific and the Western Pacific filed articles of consolidation.

Lack of Terminal Facilities

In September, 1869, the transcontinental railroad from Omaha to San José was in working order. It would be an

² The indenture making this assignment, dated October 31, 1864, is printed in full in the appendix to the journals of the Senate and Assembly of the 20th Session of the Legislature of the State of California, Vol. 6 (1874), No. 2, pp. 27–29. It covers not only the right to build and operate a railroad between Sacramento and San José, but also "all the right grants, donations, rights-of-way, loan of the credit of the Government of the United States or the bonds thereof."

³ United States Pacific Railway Commission, p. 2785, testimony Leland Stanford.

exaggeration to say that the line was in good shape. There was little or no ballast, and a good rain was said to make miles of the road-bed run like wet soap. Little had been done to eliminate grades and curves, sleeping-car accommodation at first was insufficient, the journey speed from Sacramento to Ogden was only 19 miles an hour, while schedules were not always adhered to. Cars were heated by stoves, and passengers disembarked for their meals. But in a measure these were conditions to be expected at the start, and interfered only in a minor degree with the interest and excitement of a transcontinental trip. The great fact was that a railroad existed which could be used, and over which relatively direct, rapid, and cheap communication with the East could be secured.

The greatest weakness of the Central Pacific Railroad in 1869 lay in its lack of terminal facilities on San Francisco Bay. When the company decided to begin work at Sacramento, its reasonable expectation had been that a railroad under one management would be built from that city around the southern end of San Francisco Bay to the city of San Francisco. The Central Pacific was willing to forego the advantage of this construction itself in order to gain friends, and did it the more willingly because this stretch of line was likely to be unprofitable by reason of steamship competition on the bay and on the Sacramento River. These conditions changed, however, when the Contract and Finance Company took over the construction of the railroad from Sacramento to San José. The Central Pacific interest then obtained a connection of its own with Niles near Oakland, and it was thus led to consider the question of terminals on the eastern side of San Francisco Bay.

The Real Property lies

The easiest part of San Francisco Bay for the Western Pacific Railroad to reach was undoubtedly the shore south of Oakland or Alameda. It would probably have been possible to build from Stockton to Richmond, as the Santa Fé did later, or to develop Benicia or Port Costa, or even to build a terminus

on an island in the bay. Yet as compared with these alternatives, the Oakland terminus had many advantages. It was near to the Western Pacific main line; it was served by two railroads which possessed valuable franchises that could be bought at not too great expense; and, most important of all, the conditions under which the water-front at Oakland was held were favorable to the acquisition of the necessary terminal facilities.

Oakland Water-Front

The situation at Oakland was briefly as follows: The first army of settlers in the city had been squatters on a portion of the Peralta grant. Among these had been Horace W. Carpentier, Edson Adams, and A. J. Moon. In 1852 the state legislature had incorporated the town of Oakland, had fixed its boundary, and had granted to it the land lying between high tide and ship channel along the whole of its water-front, with a view to facilitating the construction of walls and other improvements. There were 75 to 100 inhabitants in Oakland at this time, with half a dozen residences, two hotels, a wharf, and two warehouses. There were no streets—only cattle trails.

As soon as incorporated, the town held an election, and chose Adams, Moon, Carpentier, and two others as trustees. Mr. Carpentier did not qualify or serve. On May 17 and 18, 1852, the board of trustees made two important grants: In the first place, it gave to Horace Carpentier for the period of thirty-seven years, the exclusive right to construct wharves, piers, and docks at any point within the corporate limits of Oakland, with the right of collecting wharfage and dockage; and in the second place, it sold, granted, and released to the said Carpentier all the town title in the land lying within the

⁴ Laws of California, 1852, Ch. 107.

⁵ City of Oakland v. Oakland Water Front Company, transcript of testimony, p. 649, deposition Horace W. Carpentier; p. 1755, testimony A. J. Moon.

limits of the town of Oakland between high tide and ship channel.

In return for this grant Carpentier agreed to build three wharves and a schoolhouse, and to pay to the town 2 per cent of his wharfage receipts-certainly a modest recompense. Mr. Marier, president of the board of trustees, later testified that Carpentier told him when the deed was signed that he would be willing at any time to reconvey the property to the town on being reimbursed for the moneys he had expended; and this was also the recollection of others.6 But the understanding, if any existed, never could be enforced,7 so that Carpentier was firmly established in his control of the tide-lands of the city of Oakland, and in spite of petitions, riots, and litigation, sat unshaken in 1867 when the Central Pacific became interested in the matter.8

Oakland Water Front Company

Sometime prior to 1867 Carpentier had several talks with Leland Stanford, and endeavored to persuade him to build north from Niles across the Ravenswood cut-off. In the fall of 1867, Carpentier and Stanford talked again, and Stanford came to entertain the idea as a matter of reasonable negotiation. John P. Felton was engaged by the city of Oakland to look into its rights. Carpentier says that he offered the railroad one-half of his water-front if it would make his property its terminus. He says that this mode of adjustment was acquiesced in by Mayor Merritt and Mr. Felton, and that about the end of the year (1867), it came to be understood between them and Governor Stanford and himself that something

⁴City of Oakland v. Oakland Water Front Company, transcript of testimony, pp. 704-5. deposition Horace W. Carpentier; Wood, "History of Alameda County"; San Francisco Examiner, June 26, 1892. July 3, 1892.

³ Moon, one of the trustees who approved the grant, was afterwards taken into Carpenter employ. Adams, another trustee, secured the property now known as the "Adams Wast" to the east of the narrow-gauge bridge.

¹ City of Oakland v. Carpentier, 13 Cal. 540 (1859); 21 Cal. 642 (1863). The Oakland ordinances were ratified and confirmed by act of the California legislature passed May 15, 1861. (Laws of California, 1861, Ch. 377.)

should be done on approximately this basis. Judge E. I Crocker, however, attorney for the Central Pacific, asked the outstanding disputes regarding the water-front be first settled. The legislature was soon to be in session, and it was urged the all should act together in trying to get an authorization for the settlement of difficulties.

This was done. On the 27th of March, 1868, as a part of a series of compromise arrangements, the Oakland Water Front Company was incorporated. The subscribers an original directors were H. W. Carpentier, president; Samus Merritt, vice-president; Lloyd Tevis, secretary; Leland Stanford, treasurer; E. R. Carpentier and J. B. Felton. Mr. Tevi and H. W. Carpentier were in the same year directors of the Southern Pacific Railroad Company. The Oakland Water Front Company was capitalized for \$5,000,000, and the stock was divided into 50,000 shares. Of these shares H. W. Carpentier subscribed for 23,000, or 46 per cent; Stanford for 17,500, or 35 per cent; and Felton for 4,999, or 10 per cent. Lloyd Tevis took 2,500 shares, E. R. Carpentier 2,000 shares, and Samuel Merritt 1 share.

On March 31, Mr. Carpentier deeded to the new corporation all the water-front of the city of Oakland, that is to say, all the lands, and the lands covered with water lying between high tide and ship channel, being the water-front lands described in and granted in the act of incorporation of May 4, 1852. He excepted from this deed only that water-front lying between the middle of Washington Street and the middle of Franklin Street and extending southerly to a line parallel with First Street. By Section 2 of an agreement made the following day, the Oakland Water Front Company agreed to deed this last-named area to the city of Oakland.¹¹

 ⁹ City of Oakland v. Oakland Water Front Company, transcript on appeal, pp. 652-5
 deposition Horace W. Carpentier.
 Laws of California, 1868, Ch. 230.

¹¹ City of Oakland v. Oakland Water Front Company, transcript of testimos sup. cil. pp. 976-80.

Cassion of Land by Water Front Company

One, styled an indenture, was between the Oakland Water Front Company, the Western Pacific Railroad Company, Carpentier, Felton, and Stanford. Under this indenture, and in consideration of the deed of March 31, the Oakland Water Front Company declared that it held the property conveyed to it subject to covenants which were particularly set forth as follows:

The Western Pacific Railroad agreed to select within three months 500 acres from the property conveyed by the deed of March 31, including not more than one-half mile of frontage on ship channel, together with not to exceed two strips of land over the remainder of the premises from high-water mark to the parcels selected. The strips running from high-water mark were each to be not more than 100 feet wide at grade.

The Oakland Water Front Company agreed to convey to the Western Pacific Railroad the 500 acres selected, and to grant an exclusive right-of-way over the hundred-foot strips. It undertook, moreover, to sell no land west of the 500 acres, provided that these were located out to a westerly water-front of 24 feet depth of water at low tide, and to place no obstructions in front of them, or to do anything to obstruct the free approach of vessels to the parcels.

The Water Front Company further agreed to convey to the city of Oakland on demand "so much of the premises as [lay] between the middle of Franklin Street and the easterly line of Webster Street, and extending out to a line parallel with First Street, and two hundred feet southerly of the present wharf at the foot of Broadway," with the right of wharfage, dockage, and tolls thereon, and to designate and dedicate as a navigable water course for public use, the channel of San Antonio Creek, from ship channel to the town of San Antonio, to a width of

not less than 200 feet over the shallow water at the bar, : 300 feet wide above that place.

The Water Front Company, in the third place, underto to convey 25,000 shares of its stock to Carpentier, 5,000 shares to Felton, and 20,000 shares to Stanford.

Finally, the Water Front Company authorized the city Oakland, or other parties, to construct a dam above Oakland bridge, across the estuary, so as to keep the land ab submerged to high-tide mark, for the use of the owners of adjoining lands, and of the public.

The second paper, also signed on April 1, was an agreem between the Western Pacific Railroad Company, Leland St ford, and the Water Front Company. By it the railroad agr to construct or to purchase within eighteen months and complete a railroad from its main line, then at Niles, to a connecting with the parcels of land described in the indent of the same date, together with the necessary buildings a structures for a freight and passenger depot on the premis The railroad agreed to expend in new work within three ye \$500,000. The railroad company agreed that in construct across the estuary between Oakland proper and Brooklyn would leave a space for forty feet free for the passage vessels.¹²

Attitude of City

Up to this point the city had not entered into any contrar. On April 1, however, the city council passed an ordinar ratifying and confirming the grants made under the entered ordinances of 1852 and 1853, and the conveyance by 1 Marier as president of the board of trustees, and granted, and conveyed to the said Carpentier in fee simple forever, city water-front, that is to say, the lands lying between the

¹² City of Oakland v. Oakland Water Front Company, transcript of test 657-64, deposition Horace W. Carpentier.

tide and ship channel. This ordinance further provided that Carpentier should convey to the Oakland Water Front Company the property and franchises conveyed at that time by the city to him, to be used in accordance with the terms and stipulations of the contract between the Oakland Water Front Company, the Western Pacific Railroad Company, and other parties. On the following day the council passed still another ordinance reciting that inasmuch as the terms and stipulations previously provided had been complied with by Carpentier, the grant was finally settled upon him.¹⁸

The result of these somewhat complicated negotiations was that the Central Pacific acquired 500 acres of water-front property in Oakland, with a frontage of one-half mile on ship thannel, merely as a reward for coming to the city. In addition, Mr. Stanford, acting presumably on behalf of his associates, received 40 per cent of the capital stock of the Oakland Water Front Company, which on its part owned substantially all of the water-front remaining. The city attorney, who was supposed to represent the interests of the city, was rewarded with 10 per cent of the stock of the Oakland Water Front Company, and the position of director. mayor of the city, Mr. Merritt, was made vice-president of the same corporation, although the extent of his personal interest in it is not known. He seems to have held only qualifying shares. 14

¹³ See the Ordinance of the City of Oakland, No. 302 (April 2, 1868). An excellent account of these transactions is given in an unpublished manuscript in the University of California Library, prepared by Stephen S. Barrows, one-time student in the University of California. It is of some interest to observe that among the direct beneficiaries of the agreements cited were Messrs. Carpentier, Felton, and Merritt, all three at one time or other mayors of Oakland. Mr. Merritt was mayor at the time ordinances Nos. 300, 301, and 302 were passed. The compromise described was effected under authority of an act of the California legislature dated March 21, 1868.

Lamornia legislature dated March 21, 1868.

**He prodinance passed August 31, 1867, the Oakland City Council voted to pay Mr. Felton a fee equal to 15 per cent of all the property recovered by the city in the water-front litigation. (Transcript of testimony, sup. cit. p. 759.) Mr. Merritt was subsequently actual of having promoted the settlement between the city of Oakland and the Oakland Water Pront Company in order to derive a pecuniary profit for himself. In 1860 the city wancil of Oakland authorized the appointment of a committee of three to ascertain by what title Mr. Merritt held certain water-front property near the foot of Broadway in Oakland on report of the committee the council exonerated Mr. Merritt. (Ibid., pp. 1406-7, 1410-21.)

In subsequent years the relations between the c Oakland and the Oakland Water Front Company we peatedly subjects of most bitter controversy. Extravag had been the consideration of the grant to the Central for coming to Oakland, this matter was less serious th circumstance that the control of the remaining water-fr the Central Pacific through the Oakland Water Front Co. appeared to make it impossible for any rival transpocompany to gain a footing in the city. The city endeavored to free itself from this monopoly. It con at one time that Carpentier had secured the election of h agents to the board of trustees which had made his gran that in any case Carpentier had agreed to reconvey the pr to the city. Neither statement could be proved. On th trary, in 1897 the Supreme Court of California de pronounced the compromise of 1868 binding upon the pality, although it interpreted the words "ship channel" the low-tide line and not a depth of three fathoms at as had at first been supposed.15

Water-Front Monopoly Broken

Ten years later the title of the Oakland Water Franch pany was again questioned in a case brought by the Pacific Railroad Company. By this time two jettice built by the United States government extending a San Antonio Creek westward to deep water. As the deposit of material taken out of the channel of and placed north of the northern training wall, tional deposits from dredging operations cond Central Pacific and by private parties, the line of been moved appreciably out into the bay. Under the Southern Pacific, as successor to the Oakland

¹⁵ City of Oakland v. Oakland Water Front Company, 118

THE SEARCH FOR A TERMINAL



Map of Oakland and Brooklyn, showing location of Central Pacific terminals, 1871

Company, asserted title up to the limit of the new line of low tide. This claim the federal court denied. The limit of the railroad company's property was declared to be the low-tide line of 1852, extending first northwesterly and then northeasterly from the mouth of the San Antonio estuary at Sand Point as indicated in the map on page 93.16

This at one stroke transformed the Southern Pacific's holding from a water-front to an interior location, by making it clear that the title to the substantial area between the bulkhead line of the city of Oakland and the low-water mark of 1852 lay in the city and not in private hands. The city had indeed given away its water-front as it existed in 1852, but the creation of a new water-front during the following years relieved it of the effects of its negligence. It thus appears that the alienation of the water-front of Oakland in 1868 did not permanently vest in the Central Pacific interest control of the tide-lands to which the compromise of that year referred. For the time being however, the company secured a well-nigh complete monopoly Not only had it convenient access to tide-water for its ow trains, but it was able for many years to keep other railroa from obtaining a similar advantage. Up to this point, ho ever, no arrangement had been completed for a terminus the San Francisco side of San Francisco Bay.

Proposed Grant of San Francisco Water-Front

In order to establish the Central Pacific with comadequacy, the associates accordingly now turned to the weside of San Francisco Bay and took steps to provide the facilities in the city of San Francisco itself. Possibly the because they had acquired or were about to acquire a ling interest in the San Francisco and San José Railro

¹⁶ Western Pacific Railway Company v. Southern Pacific Company. (1907). The court also pointed out in the decision that although the low-lide jected across the mouth of the estuary for the purpose of determining the baland, this should not be done in ascertaining the limit of the railroad grant.

Section Section 17.

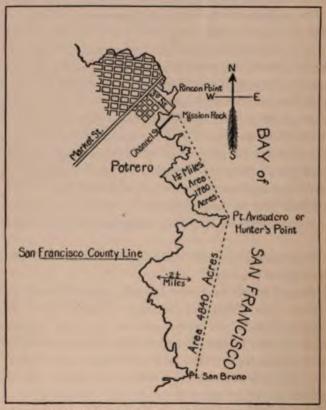
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ponents if the screens is the first that the blue of such a water-limit to the first that the of such a water-limit is the first that the other was to be measured in the other to the Hamiltonian materials was

of San Francisco from the south or the southwest on account of the shape of the peninsula, and no railroad can conceivable allowed to cross the main thoroughfare, Market Street, to penetrate the thinly settled residential districts in the nort



Boundaries of Railroad Tide-Land Grant, as proposed in 1868.

The bill provided that the Central Pacific, Western Pacific Southern Pacific, and the San Francisco and San José rai roads, which were the proposed grantees, should pay the fai market cash value of the submerged lands at the time of the - -- -

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nature of the proposed contract was understood and its defective full publicity by the San Francisco press. The Francisco Bulletin commented as follows:

The scheme is an outrageous one. A proposition to set to the Railroad Companies at a reasonable price, so much of the southern water-front as would be actually necessary for depots, warehouses, workshops, etc., might be considered favorably, but a proposal to give to what is or will be virtually a single corporation two-thirds of the frontage of a city destined to be the second in America, is utterly indefensible... this immense property will be worth eventually as much as the Pacific Railroad itself.¹⁹

The Alta said:

If the parties who have so modestly presented their humble petition for this concession had gone one step farther, and asked for a grant of the whole State of California—all its tide and marsh lands—the control of all its rivers, bays and inlets, we do not know that the public amazement would have been any greater.²⁰

Even the conservative San Francisco Times suggested the it would be well for the railroad companies to submit detaile estimates of the land needed for terminals and the uses to which this land was to be put, while it refrained from commenting on the Bulletin's assertions that it was the intent of the rail roads to locate their terminus well south of the city of San Francisco to the great profit of parties from Sacramento who were buying lands around Hunter's Point.

Another Plan Substituted

Whether or not this last accusation was well founded the opposition of the city grew so intense that the legislature did

¹⁹ San Francisco Bulletin, March 7, 1868.

Daily Alta California, March 10, 1868.
 San Prancisco Times, March 13, 1868.

Pacific, in consideration of a subsidy of \$3,000,000 and of al terations in the terms of the Mission Bay grant so as to mak it more acceptable. Nothing came of these last negotiations nor of somewhat similar proposals made in 1872 by a citizens committee engaged in fighting the Goat Island scheme (see below) and submitted to popular vote. In 1873-74, however the city granted Stanford additional though minor franchises enabling him to run trains on certain city streets.

Proposed Occupation of Goat Island

It will be readily understood that feeling ran high both in Oakland and San Francisco while the railroad negotiations for terminal facilities were going on. Nor was the public excitement allayed by the attempt of the Huntington group to occupy Goat Island, which occurred at the same time. Goat Island, formerly known as "Yerba Buena" Island, is a small body of land lying about midway between San Francisco and Oakland. Reference to the inset accompanying the map of Oakland will show its exact location. It is obvious enough why the Central Pacific wanted the use of this island and of the mud flats lying directly north. It is just as obvious why, in the absence of regulation, the public should have objected to its exclusive occupation by any single railroad company. Yet, in March, 1868, one day after the action granting to the Central Pacific and to the Southern Pacific 60 acres of tide-lands in San Francisco, the state legislature granted to the Terminal Central Pacific Railroad Company—a corporation controlled by the associates -a defined area not to exceed 150 acres of the submerged shoal lands north of the island, with the right to reclaim these lands for railroad depot and commercial purposes, and to connect them by a bridge with the Oakland, Alameda, and Contra Costa shores. The company agreed to pay the fair appraise value of the lands into the state treasury. tion within four years a first-class rai

that the advantages of the location would draw the warehouses, that other firms would follow, and that men who had business on the island would not live in San Francisco, but would make their homes on the eastern side of the Bay where land was cheaper, more level, and more fertile. These statements were generally believed.

just mentioned. In March, 1872, however, the San Francisco chamber of commerce passed resolutions and prepared a memorial addressed to the President and to Congress opposing the proposed grant, and a mass meeting was held in San Francisco to make public protest. Following this, conferences were held between a committee of citizens and the president of the Central Pacific in the hope of arriving at some general understanding relative to terminal facilities, and eventually the whole Goat Island project lapsed.²⁶

Purchase of Other Roads

By the middle of 1868 the Central Pacific had thus secured satisfactory water-front facilities in both Oakland and San Francisco, amounting in the case of the former city, through the Oakland Water Front Company, to monopoly control. Needless to say, it had also abundant accommodations at Sacramento. Through the Southern Pacific Railroad it had also franchises in San Francisco, including the right to maintain tracks in the vicinity of Third and Townsend Streets. Up to August, 1868, however, it does not seem to have made the connections between its main line and Oakland that were necessary to enable its trains to reach San Francisco Bay at all. In that month Stanford, Huntington, Hopkins, and Crocker

²⁶ Mr. Stanford has asserted that the whole trouble was caused by six gentlemen, three of whom had interests near Ravenswood, where it was thought that the Central Pacific might cross, and three of whom had interests in Sausalito. He says he was informed by a member of Congress that he could have had necessary legislation in Congress for \$10,000. This refers to the campaign of 1875-76. (United States Pacific Railway Commission, pp. 3170-71, testimony Leland Stanford.)

bought a majority of the stock of the San Francisco and Oakland Railroad, and the following year they purchased likewise the San Francisco and Alameda Railroad. The first-named company had 2 or 3 miles of track eastward from Oakland's point. The Alameda company had about 16 to 18 miles. Both had valuable franchises, and both owned ferry-boats and piers extending some distance into the bay. In 1870 both of the companies were joined in the San Francisco, Oakland and Alameda Railroad, and in the same year this company was consolidated with the Central Pacific. By 1869 the gap between the end of the San Francisco and Alameda Railroad and Niles had been filled, and this in a real sense completed the transcontinental line.

CHAPTER VI

ACQUISITION OF THE CALIFORNIA PACIFIC

Tendency to Monopoly Control

The first intimation that the Central Pacific Railroad was on its way to something like a monopoly control in the state of California is to be found in the negotiations for terminals on San Francisco Bay. But it was not long before more evidence came to light. Looking back with the advantage of knowledge of the company's later history, it seems probable that the possibilities of monopoly control of the railway business of California were present to the owners of the Central Pacific as early as 1868. The task of securing such control was not, after all, so very great. California had few railroads in the sixties, and those which were in operation were small and unprosperous, and could be cheaply acquired.

Besides this, the topography of the state lent itself to schemes of conquest by a sharp separation of the interior valleys from each other and from the coast. It was not necessary to occupy the whole country, for an effective control over one valley could be maintained in spite of the fact that an adjacent valley was in hostile hands. Nor was there any public opinion in California at the time thoughtfully critical of monopoly, as such. The country was new. Theories covering the relations of large corporations to the consuming public had not been developed. People hated monopolies because monopolies meant high prices; but the very persons who were most likely to object to monopoly were also likely to seek positions of advantage for themselves when possible.

Under conditions like these, Stanford, Huntington, Hop-

and Crocker were almost sure to attempt to dominate the way system of the state as soon as they determined to make r connection with it more than temporary. This decision made as the Central Pacific approached Ogden in 1868 and g. Had the associates been able to sell out before this it is likely that they would have done so. Indeed, it is libly reported that 80 per cent of the stock of the Central life was offered to D. O. Mills as late as 1873, for a price 20,000,000,1 and this was probably the last of several offers to different parties.

The evidence seems to show, however, that by 1870 the atington group were inclined to remain in the railroad busi-Strategically, the associates then occupied a very strong ition. They possessed the only railroad line from Califorto the East. They dominated the Oakland water-front, held important concessions in San Francisco. Branch s, like long tentacles, stretched from Roseville north to co, on the way to the Oregon state line,2 and from Lathrop th to Modesto, to be extended to Goshen by August 1, 1872.3 1869 the Sacramento Valley Railroad, with its extension Placerville, had been bought, and the California Central Iroad from Folsom to Marysville was under Central Pacific trol. Even the budding project for a Southern Pacific Raild had received the attention of Stanford and his associates. feed, the only really weak spots in the associates' position re their failure fully to occupy the San Joaquin Valley, and

United States Pacific Railway Commission, pp. 3496-3500, testimony D. O.

The California and Oregon Railroad Company was subsidized by Congress by Act of 25, 1866, to build from a point on the Central Pacific Railroad to the Oregon boundary, 21 was to meet a railroad coming south from Portland. Tracks reached Chico, July 10. In 1870, the California and Oregon was consolidated with the Central Pacific. In it reached Redding, and on October 5, 1887, the state line. The federal legislation ing to the California and Oregon Railroad is notable for the liberality of the land grant

This branch was known as the San Joaquin Valley Railroad. The company bearing ame was incorporated in 1868. Stanford, Huntington, Hopkins, Charles, and E. B. er were directors. In 1870 it was consolidated with the Central Pacific. Stanford ed in 1887 that the trunk lines up the San Joaquin and Sacramento valleys were the important factors in the Central Pacific's local business.

the fact that they did not control the short line between Sacramento and San Francisco. We will, accordingly, consider the



Map of California Railroad, about 1870.

situation and the policy of the Huntington group in these respects.

tition of California Pacific

e most direct railroad route from Sacramento to San sco is by way of Vallejo or Benicia, across the Straits of nez, and along the eastern shore of San Francisco Bay. 5, after the Central Pacific had begun work in earnest, ifornia Pacific Railroad Company was incorporated to this route from Sacramento as far as Vallejo. Convere let, though no material progress was made for two In 1867 the work was taken up with fresh energy, and in the road was finished between Vallejo and Sacramento, branch from Davisville to Marysville. The newly built Valley Railroad from Adalanta, California, to Calistoga, quired at the same time. In 1870 the system reported les of road, of which 22 miles consisted of a ferry confrom Vallejo to the city of San Francisco.

seems more probable that the California Pacific was lly intended as a connection for the Central Pacific than was built as a competitor with the larger road. This isfactory enough to the Central Pacific so long as this by terminated at Sacramento. But there is no manner ot that the California Pacific became a formidable comto the Central Pacific when the latter acquired its cirline to Oakland via Stockton. This was especially true espect to the passenger business. The distance from ento to San Francisco via Vallejo was 87 miles, via on 1371/2 miles; the time via Vallejo was 31/2 hours, ckton 5 hours. It appears that transcontinental pason Central Pacific trains often changed cars at Sacrasacrificing the balance of their through ticket and extra fare in order to save time.4 Of the local pasbusiness between Sacramento and San Francisco, the nia Pacific claimed three-fourths. How large a share

ed States Pacific Railway Commission, pp. 3628-29, testimony J. P. Jackson; itimony Leland Stanford.

of the freight went by the shorter line does not appear, but i must have been considerable, for Mr. Stubbs later estimate that the cost of operating the Benicia route could not have been more than 50 per cent of the cost of operating the Western Pacific, and it is in evidence that the Central Pacific sent mos of its freight via Benicia as soon as it obtained control of both lines.

It should be remembered also that in addition to its competition for local business, the California Pacific had ambitious plans in other directions. We know, for example, that it pro posed an extension eastward via Beckwourth's Pass to a connection with the Union Pacific, at or near Ogden. was to be built by the California Pacific Railroad Eastern Extension Company, incorporated at Sacramento in March, 1871 with a capital stock of \$50,000,000.6 Other reports credited it with an intention to enter the San Joaquin Valley; while it influence in Sonoma, Marin and Napa counties was recog nized. In short, by 1870 the California Pacific was not only important in respect to what it had actually accomplished, but it had in it the germ of a railroad system in no way inferior to that of the Central Pacific itself.

Rival's Weakness

Unfortunately for the California Pacific, the company's physical and financial position in 1871 did not measure up to the magnitude of its ambitions. Counsel for the Central Pacific in later years drew a vivid picture of the condition of the railroad in 1867 which probably contained more than a grain of According to this account, the right-of-way of the California Pacific was unfenced, its sidings were few, and its stations were insufficient. The road-bed was almost wholly

United States Pacific Railway Commission, pp. 3366-67, testimony J. C. Stubbs.
 Ibid., pp. 3628-29, testimony J. C. Jackson.
 San Francisco Bulletin, November 29, 1869.

payments over the \$550,000 minimum in consideration of a fixed additional payment of \$50,000 a year.¹⁴

By and large, the California Pacific proved a good investment for the larger company, especially after the Northern Railway had been built and a new route established between Oakland and Sacramento. The reason for its original acquisition was, nevertheless, in all probability, not the chance of a direct profit, but the advantage expected from a monopolistic control of the territory north of San Francisco Bay.

¹⁴ United States Pacific Railway Commission, pp. 3936-42, testimony L. B. Calletenden.

erect and widen the trestle work, where trestle work is required, from the bridge across the Sacramento River to Davisville, in the county of Yolo, in the State of California, and place thereon a good and sufficient superstructure, consisting of timber and ties and iron railroad thereon, so as to make an additional railroad track from said bridge to said Davisville, fully equal to the present railroad on the present embankment and to connect the same with proper switches with both the main track to Vallejo, and the track to Marysville of the railroads of the party of the second part. Said parties of the first part to furnish all the material for the said additional railroad track, and embankment, and trestle work, and to have the same completed and ready for use on or before the first day of January, in the year one thousand eight hundred and seventy-three.

In consideration of this construction, the California Pacific was to pay the associates 1,600 second mortgage California Pacific bonds.

On August 19, 1871, the Huntington group, now controling a majority of the board of directors of the California Pacific, entered into an agreement with the California Pacific mder which the Central Pacific undertook to pay the California Pacific \$5,000 per month, to furnish the equipment for assenger business, and to guarantee the interest on 1,600 econd mortgage bonds, while the California Pacific in return greed to transport to or from San Francisco, passengers beginning or ending their trips on the Central Pacific or connecting roads, and to maintain its fare for other passengers at \$4 between San Francisco and Sacramento. On September 1, 1871, he Central Pacific took full control of the California Pacific, and moved its offices from San Francisco to Sacramento.

Motives Behind Transactions

Two explanations of these transactions are possible. Counsel for the Central Pacific, in 1886, maintained that the con-

¹⁸ Main v. Central Pacific. Statement of facts. The closing argument of L. E. Chittenden, of counsel for plaintiffs, 1886. See also San Francisco Chronicle, August 16, 1874, statement of Milton S. Latham.

Pacific, according to this point of view, arranged for additional track between Sacramento Bridge and Davisvillander of still more important enlargement in embankment widening and erection of trestle work, by the transfer fendants of second mortgage bonds. These bonds, it alleged, though considerable in amount, had little value boof the desperate financial condition of the California Pacific gave value to which it held by a guaranty, and used them to buy a control interest in California Pacific stock. Of this, the mine stockholders of the corporation had no right to complain.

Counsel on the other side maintained that the essence feature of the whole transaction was the purchase of Califor Pacific stock, and that the various contracts merely supplied a method of buying this stock without paying for it. Starting therefore, with the contract of July 13, they pointed out the the defendants agreed to purchase California Pacific stoc from Latham with California Pacific bonds which were not ye in existence, stipulating for full control of the Californi Pacific before payment should be made, in order that the might obtain the purchase price from that company. When Latham anounced that he was ready to deliver the stock, it became necessary for the defendants to secure about \$1,600,000 in California Pacific bonds. These bonds could be legally issued only for new construction, hence the contract for a second track from Sacramento to Davisville. When issued and in the hands of the defendants, it was necessary to have the Central Pacific's guaranty. For this the Central Pacific required the California Pacific to enter into the traffic agreement of August 19, obtaining thus a full quid pro qua. result was that the California Pacific furnished for and then a consideration for the Central P which together served to purcha



Map showing northern end of the San Francisco and San José Railroad in 1862.

California Pacific bonds, is the coincidence that the par value of the bonds issued for construction was practically identical with the amount needed to pay for the 76,101 shares of stock sold by Latham to Stanford, Huntington, and Hopkins. Still another peculiar incident was that of the execution, contemporaneously with the main contract, of a supplementary agreement, under which the Stanford group agreed to pay Latham \$250,000 in a six months' note, besides the other consideration for California Pacific stock, if he would visit New York at once, obtain the consent of the stockholders whom he represented, and personally assume all the obligations of the California Pacific above the sum of \$8,421,000 specified in the bond.

Whatever the true motives for the transaction described. the coincidence of the stock sale with the other transactions relieved the representatives of the California Pacific of any intense interest in the matter, and must inevitably have made them pliable as to terms. The directors present at the meeting of August 9, when the contract for the construction of the second track was approved, were Jackson, Hammond, Latham, Sullivan, and Atherton. Of these gentlemen, Hammond, Sullivan, and Atherton each held five shares only, transferred to their names to qualify them as directors; while the shares of Latham and Jackson were ready for transfer to Stanford, Huntington, and Hopkins. Hammond, vice-president of the company, as well as a director, subsequently said, referring to the contract for a second track: "I don't recollect that I ever saw or knew what that contract was, until it was brought into the board . . . This contract was made with a party who was purchasing the majority of the stock of that company, and whose interest would be to do that work in a workmanlike manner." Certainly this was not a desirable point of view for a representative of the California Pacific take.



Map showing northern end of the San Francisco and San José Railroad in 1862.

arrangements between the Central Pacific and the California Pacific went beyond what one might have expected. It appears, for instance, that soon after the Stanford group obtained control of the last-named company, that portion of the contract of August 8, 1871, which provided for the payment of \$5,000 monthly by the Central Pacific to the California Pacific, was eliminated. This elimination was said to have taken place by "mutual consent," a meaningless phrase when the same men had charge of the negotiations for both sides.

Independent Security Holders

It has been charged, also, that Stanford and Huntington deliberately endeavored at this time to depress the value of California Pacific mortgage securities in order to induce independent holders to reduce their claims. In support of this contention there is evidence that very strong pressure was brought to bear upon independent security holders in 1874, and that as a result of this pressure the fixed charges of the California Pacific were reduced from \$763,500 in 1875, to \$303,500 in 1886. No part of this burden was borne by the second mortgage bonds held by Stanford, Huntington, Hopkins, and Crocker, nor was any assessment levied upon the company's stock.

As a part of the campaign, during the period mentioned, wide publicity was given by the management of the California Pacific to financial difficulties, real or alleged, with which the company was confronted. Thus in June 1875, the board of directors confessed a judgment of \$1,309,041.84 to one J. P. Haggin, assignee of certain claims of the Central Pacific, the Contract and Finance Company, and the associates, for advances previously made. Mr. Haggin had no interest in the matter, merely allowing the use of his name. The following month, Vice-President Gray, of the California Pacific, mate

¹⁵ Colton case, pp. 2214-15.



Map showing northern end of the San Francisco and San José Railroad in 1862.

Francisco and San José Railroad, which ran from San F cisco down the peninsula in a southerly direction to the of San José. Originally this company was a local project of and for some years an unsuccessful one. Several parties their hands at building it, but failed because they could raise the necessary funds. In 1860 the project was taken by a group of local capitalists of more than ordinary en and resources, contracts were let, and four years later a to San José was actually in running order. It was to to capitalists that the Central Pacific transferred its rights in Western Pacific, and it seems to have been expected that San Francisco and San José and the Western Pacific toge would form the western end of the transcontinental line.

This expectation was disappointed, as was the hope the San Francisco and San José would participate in the fee subsidies and land grants provided in the Pacific Railway of 1862 and 1864. The city of San Francisco did, how subscribe \$300,000 in city bonds to San Francisco and José Railroad stock, and the counties of Santa Clara and Mateo, \$200,000 and \$100,000, respectively. At this time Huntington group had no interests south of Sacramento. 1869 the San Francisco and San José was extended to Giby a company known as the Santa Clara and Pajaro V. Railroad Company.

Southern Pacific Railroad Company

Shortly after the completion of the San Francisco and José, another company, the Southern Pacific Railroad C pany, was incorporated 2 by local parties in San Francisc build a line of railroad in as direct a route as feasible f San Francisco to the town of San Diego, through the cour

² On December 2, 1865. United States v. Southern Pacific, transcript of testin p. 1284. Hereafter referred to as "United States v. Southern Pacific." This compand organized under the general California statute relating to incorporations approved Mat861.



Map showing northern end of the San Francisco and San José Railroad in 1862.

of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego; thence eastward through the county of San Diego to the eastern boundary of the state of California. It is quite possible that this new company was organized in anticipation of further legislation at Washington. At any rate in July, 1866, Congress granted to the Southern Pacific Railroad, besides a right-of-way, ten alternate sections of unreserved and unappropriated public lands on either side of the road, in the state of California, on condition that it construct a line, presumably from San Francisco, to a connection with a projected railroad known as the Atlantic and Pacific Railroad, which was authorized to extend from the state of Missouri to the Pacific Ocean. In case any portion of the twenty sections indicated should be found to be occupied or reserved, the Southern Pacific was to be given the privilege of selecting other lands within 20 miles of its road. The company was to begin work within two years, and to complete not less than 50 miles annually after the second year. No money or bond subsidy was given.3 By Act of July 25, 1868, Congress extended the time for the construction of the Southern Pacific line, requiring the completion of the first 30 miles by July 1, 1870. and subsequent construction of 20 miles annually.4 This was plainly an enterprise of first-class magnitude.

The evidence suggests that the San Francisco and San José and the Southern Pacific Railroad companies fell under the control of Stanford, Huntington, Hopkins, and Crocker some time in 1868. Mr. Stanford published a statement on March 6, 1868, to the effect that any rumor that the Central Pacific or Western Pacific Railroad Company or any person connected with either of them had purchased the Southern Pacific or the San Francisco and San José or any property or franchises con-

³ 14 United States Statutes 292 (1866). An act granting lands to aid in the construction of railroad and telegraph line from the states of Missouri and Arkansas to the Pacific Ocean. The provisions of this act were promptly accepted by the Southern Pacific. Set United States v. Southern Pacific, pp. 1672-73.

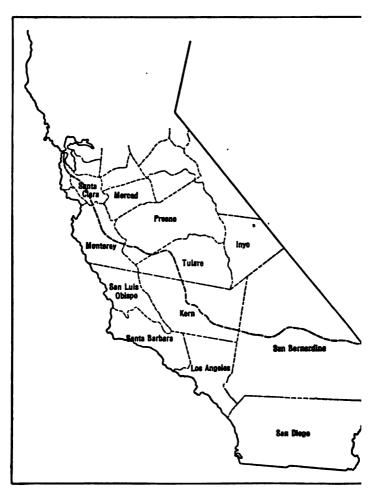
^{4 15} United States Statutes 187 (1868).

nected therewith, or that any negotiations had been made tending to that result, was utterly without foundation.5 On the other hand, it was Collis P. Huntington who signed a letter dated September 25, 1868, addressed to the Secretary of the Interior, at Washington, transmitting the annual report of the Southern Pacific Railroad required by the act of Congress. If Stanford told the truth in March, these two circumstances would indicate with sufficient precision the time when the associates took charge. In any case their influence was presently to appear.6

Consolidation

On October 12, 1870, the San Francisco and San José Railroad, the Southern Pacific, the Santa Clara and Pajaro Valley Railroad, and a new company, the California Southern, organized on paper only, were consolidated into a corporation known as the Southern Pacific Railroad of California. The directors for the first year were Lloyd Tevis, Leland Stanford, Charles Crocker, C. P. Huntington, Mark Hopkins, Charles Mayne, and Peter Donahue. Plainly, Central Pacific interests were in control. The purpose of the new company was stated to be to construct and operate a railroad from San Francisco to the Colorado River, through the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego, together with a line from Gilroy through the counties of Santa Clara, Santa Cruz, and Monterey, to a point at or near Salinas City. This was not the line proposed in the articles of incorporation, as an examination of the accompanying map will show. It was, however, in the main the route designated by the Southern Pacific in 1867, upon which land had been withdrawn from entry by the government at Wash-

United States v. Southern Pacific, Defendant's Exhibit No. 23. Neither Huntington Stanford signed the articles of association of 1870 as holders of stock of the consolidating spanies. This may merely mean, however, that the stock of these companies was placed for other names for purposes of convenience.



Proposed route of the Southern Pacific Railroad, according to map fil the Commissioner of the General Land Office on January 3, 186

ington, and it had the advantage of reaching the eastern boundary of California with less mileage and fewer grades than the line originally laid out.7

In 1871, an additional route from Los Angeles to Yuma was designated under the authority of the twenty-third section of the act to incorporate the Texas Pacific Railroad, which authorized the Southern Pacific Railroad Company to construct a line of railroad from a point at or near Techachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights and privileges, and subject to the same limitations and restrictions as were provided in the Atlantic and Pacific Act of 1866.8

Ambitious Construction Program

Because of the terms of the federal Act of 1866, it was necessary for the Southern Pacific to proceed steadily in its construction to the south. The first piece of road offered in satisfaction of the requirement for a minimum annual construction, was that from San José to Gilroy. Then came an extension to Tres Pinos, which ended, for the time being, building on the Northern Division. What happened was that the associates found the southern end of the San Benito Val-

The change of route was authorized by Congressional resolution, dated June 28, 1870 (16 United States Statutes 382 [1870].) It should be observed that the so-called Mussel Storgh "massacre" resulted from a dispute over the ownership of land south of Hanford, Telsre County, which lay along the line of railroad as designated in 1867, but not along that proposed in 1865. It appears that a number of persons settled upon and improved tracts par Hanford before the railroad applied for patent to land in this vicinity, but after the Southern Pacific had filed the n ap showing its intended route with the Commissioner of the General Land Office in 1867, and after lands along this route had been withdrawn.

When the railroad secured title it offered to sell this occupied land to the parties who had settled upon it, but at prices which were much above those current for unimproved farm and. That is to say, the railroad asked from \$11 to \$35 an acre, instead of the customary last to \$5 an acre. The settlers understood from this that the company was trying to make them pay for improvements which they themselves had made, and resorted to active opposition. In 1876 the settlers petitioned Congress to restore a portion of the land grant a question to the public domain, on the ground that no railroad had ever been constructed dong it.

long it.

In 1881 the railroad attempted to take forcible possession of two pieces of the disputed in. There was resistance, and in the shooting which followed, eight men were killed, incling six settlers. This was the "massacre." There seems to be no question but that the glovad possessed legal title to the Tulare County property. The weakness of its position in the fact that it was attempting to build a railroad in one place and to secure a land ant in another—a procedure never contemplated by Congress, and one not unlikely to dd to hostile legislation. Eventually the railroad title was sustained, and the land sold by company, though at reduced prices.

¹⁶ United States Statutes 573 (1871).

ley, in which Tres Pinos is located, relatively poor in traffic, and difficult to build in. Stanford visited the country personally, and found no business there, nor, in his opinion, any prospect of business. He accordingly shifted construction from the Tres Pinos line to the territory south of Goshen, and caused the Southern Pacific to build its next 20 miles in that section, expecting to connect with the San Joaquin Valley branch of the Central Pacific which ultimately came to Goshen in August, 1872. The Southern Pacific track reached Delano on July 14, 1873, Caliente on April 26, 1875, and Mojave on August 9, 1876. The stretch of 240 miles from Mojave to The Needles was not finished until June 22, 1883, but that to Fort Yuma was completed in 1877.

In later years there was discussion concerning the right of the Southern Pacific to refuse to build the stretch of road lying between Tres Pinos and Alcalde, connecting the San Benito and the San Joaquin valleys. It was insisted that the contract implied in the Congressional land grant of 1866 was an entire one, and that the amount of land given had been fixed in consideration of the difficulties of mountain construction between the valleys named. This contention is not, however, borne out by the terms of the Act of 1866, and there seems to be no good reason why Congress should have stipulated for the building of this particular bit of road, when satisfactory connection between the San Joaquin Valley and San Francisco could be secured in another way. On their part, the associates never intended to build across the Coast Range, at least not out of the San Benito Valley. In 1872 the articles of association of the Southern Pacific Branch Railroad Company contained provision for a line from a point at or near Salinas City in the county of Monterey southeasterly to a point in Kern County south of Tulare Lake, intersecting the San Joaquin Division of the Southern Pacific. Even this road never was built.9

⁹ See on this matter Colton case, p. 1621, Crocker to Colton, February 12, 1875.

At the time when the Southern Pacific Railroad entered upon its ambitious project for southern construction, the territory south and east of Goshen was very slightly developed. Los Angeles was a city of 5,728 persons in 1870, with an assessed valuation of \$2,108,061, and an average of one saloon to every fifty-five inhabitants.¹⁰ San Diego had a population of 2,300, and Santa Ana 1,445. These were the largest concentrations of people to be found, and they amounted to nothing more than little country towns. 11 Nor were the statistics of industry much more striking. Los Angeles and Kern counties produced respectable amounts of wool, and in the matter of wine the output from the former amounted to nearly one-third of that for the entire state and one-sixth of that reported for the United States as a whole. The number of cattle was also considerable. But in grain only a beginning had been made, the yield of the orchards was still small, and the volume of general agriculture, to say nothing of manufactures, was insignificant.

The railroad construction in the territory consisted of two local railroads connecting Los Angeles with the harbors of San Pedro and Santa Monica, to which should be added mention of the Texas Pacific project of Mr. Scott. The Los Angeles and San Pedro Railroad was organized in 1868 and was finished on October 26, 1869. The city of Los Angeles subscribed \$75,000 in city bonds, and the county took an additional amount of \$150,000, also paying in bonds. City and county bonds both bore 10 per cent. The construction of this railroad marked the fruition of efforts begun as early as 1861, but the credit for final accomplishment of the work was due to Phineas Banning, the principal business man of Wilmington. General Banning is said to have entered the California

²⁰ Guinn, "A History of California," pp. 254, 276.

¹¹ Ninth Census of the United States, 1870.

¹² Newmark, "Sixty Years in Southern California." The Los Angeles and San Pedro was built to Wilmington only in 1869. It was not extended to San Pedro until 1881.

legislature in order to advance his project and to have success fully overcome a great deal of opposition in his own district in order to put it through. The company was consolidates with the Southern Pacific in 1874.¹⁸

In addition to the Los Angeles and San Pedro, reference should be made to the Los Angeles and Independence, a rail road built in 1875 by Senator John P. Jones, of Nevada, partito afford an outlet to certain mines in Inyo County from which the senator expected large results, and partly to develop property on Santa Monica Bay. This road was also acquired to the Southern Pacific interests, but at a later date, and at the instance of Mr. Huntington against the judgment of at leasone of his associates.

Grant by Los Angeles

By the acquisition of the Los Angeles and San Pedro Rai road, the Southern Pacific provided itself with a souther terminal, in advance even of the completion of its main lin At the same time it used the advantage which the location of its mileage in the San Joaquin Valley gave to it in order persuade the people of Los Angeles to grant it aid in the measure they could afford. Speaking after the event, it sufficiently obvious that sooner or later the Southern Pacifi or some other transcontinental road, was bound to seek an or let on the Pacific Ocean either at San Diego or at San Pedr and of these two San Pedro was the most likely to be chose But this fact, clear at the present time, was not obvious to the inhabitants of Los Angeles; on the contrary, the possibili that Los Angeles might be passed by caused them the livelie concern. This feeling was known to the officials of the Sout ern Pacific. In May, 1872, two citizens of Los Angeles wro Mr. Stanford stating that they expected to call a meeting

¹³ Ranchers near Los Angeles feared lest the construction of the railroad would do as with horses and the demand for barley

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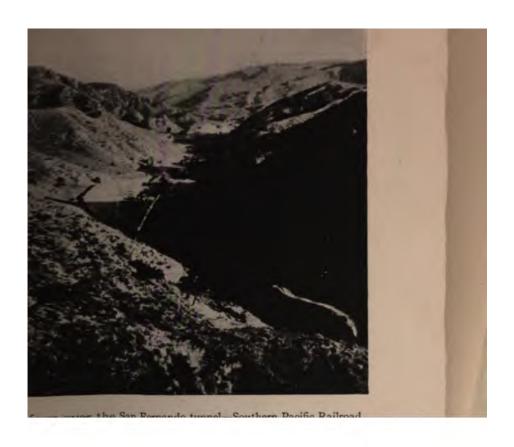
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tax-paying citizens of the county in a few days, for the purpose of selecting from among them an executive committee which should have full power to meet the representatives of any railroad company who might visit Los Angeles, in order to agree upon some plan whereby a railroad to Los Angeles might be constructed.¹⁴

The meeting was called, and the committee appointed. Harris Newmark, a prominent business man of Los Angeles, says that before the meeting he and ex-Governor Downey went to San Francisco and canvassed the whole situation with Mr. Huntington. A delegation from the citizens' committee made a second visit and returned with a man named Hyde, who represented the railroad company. Between Mr. Hyde and the new committee terms were presently agreed upon. The Southern Pacific demanded a donation of 5 per cent of the assessed valuation of the county, which was the maximum authorized by state law. Since the county valuation in 1872 was set by the State Board of Equalization at \$10,554,592, this meant a gift of \$527,730. To cover this the county proposed to issue \$377,000 in new 7 per cent bonds, and to turn over besides \$150,000 in stock of the Los Angeles and San Pedro Railroad, which it held by virtue of its subscription to that company in 1868. The city added \$75,000 in Los Angeles and San Pedro Railroad stocks, and 60 acres of depot ground. This made a clear gift in the aggregate of \$602,000, besides whatever the depot ground might be worth, or \$100 per capita for a population of 6,000 souls. On its side the Southern Pacific agreed to build 50 miles of its main trunk line in the county of Los Angeles, 25 miles to be built northward and 25 miles eastward from Los Angeles city. Later the company promised to add a branch to Anaheim. The whole arrangement was submitted to popular vote on November 5, 1872, and was then approved.

^{14 &}quot;Illustrated History of Los Angeles County" (Chicago, 1889), p. 136.

Inconveniences of Travel

Construction in accordance with the terms of the agreemen of 1872 was promptly begun. San Fernando and San Pedra were reached in 1874, Anaheim in 1875, and the Southern Pacific main line in September, 1876. A vivid picture of the inconvenience of travel between Los Angeles and the East while the work was in progress, is given in the reminiscences of Harris Newmark, who has just been mentioned in connection with the negotiations between the railroad and the county of Los Angeles:

Before the completion of the San Fernando tunnel, a journey east from Los Angeles by way of Sacramento was beset with inconveniences. The traveler was lucky if he obtained passage to San Fernando on other than a construction train, and twenty to twenty-four hours, often at night, was required for a trip of the Telegraph Stage Lines' creaking, swaying coach over the rough roads leading to Caliente—the northern terminal—where the longer stretch of the railroad north was reached. The stage lines and the Southern Pacific Railroad were operated quite independently, and it was therefore not possible to buy a through ticket. For a time previously, passengers took the stage at San Fernando and bounced over the mountains to Bakersfield, the point farthest south on the railroad line. When the Southern Pacific was subsequently built to Land's Station, the stages stopped there; and for quite a while a stage started from each side of the mountain, the two conveyances meeting at the top and exchanging passengers. Once I made the journey north by stage to Tipton in Tulare County, and from Tipton by rail to San Francisco. The Coast line and the Telegraph line stage companies carried passengers part of the way. The Coast Line Stage Company coaches left Los Angeles every morning at five o'clock and proceeded via Pleasant Valley, San Buenaventura, Santa Barbara, Guadalupe, San Luis Obispo, and Paso de Robles Hot Springs, and connected at Soledad with the Southern Pacific Railroad bound for San Francisco by way of Salinas City, Gilroy, and San José, and his line made a specialty of daylight travel, thus

offering unusual inducements to tourists. There was no limit as to time; and passengers were enabled to stop over at any point and to reserve seats in the stage coaches by giving some little notice in advance.

In 1876, I visited New York City for medical attention and for the purpose of meeting my son Maurice, upon his return from Paris. I left Los Angeles on the twenty-ninth of April by the Telegraph Stage Line, traveling to San Francisco and thence east by the Central Pacific railroad; and I arrived in New York on the eighth of May.¹⁵

The San Fernando tunnel to which Mr. Newmark refers is located 27 miles north of Los Angeles in the valley of the same name. It lies along the most direct and convenient route from Los Angeles into the San Joaquin Valley. Because of its length, nearly one and a quarter miles, and the unfamiliarity of the people of the coast with projects of this kind, there was much interest in the work and many doubts as to whether it could succeed. Governor Stevenson was credited with the statement that a tunnel could not be constructed. Other critics maintained that people could never be induced to travel through so long a tunnel, and that in any case the winter rains would cause it to cave in, to which Stanford replied that it was "too damned dry in Southern California for any such catastrophe." So far as the records now show, however, there was no unusual obstacle encountered in the work, although the slowness with which the bore advanced and the large expense connected with construction caused considerable anxiety to the management of the Southern Pacific.

Western Development Company

In carrying out their plans for the occupation of Southern California, the Huntington group naturally followed the same general policy that had proved profitable to them in the case

¹⁴ Newmark, "Sixty Years in Southern California," pp. 496-97.

of the Central Pacific. That is to say, they organized construction companies, controlled by themselves, caused these companies to contract with the Southern Pacific for the construction of specified sections of line, and in their capacity as stockholders of the Southern Pacific required that company to issue and turn over large quantities of stocks and bonds in payment for work done. No further comment upon this method of procedure is necessary.

The first construction company which did work for the Southern Pacific, under the plan outlined in the preceding paragraph, was the Contract and Finance Company. This was the same organization that had completed the Central Pacific It appears that the Contract and Finance Company simply shifted men, teams and equipment from the Central Pacific to the Southern Pacific line between San José and Tres Pinos. Later it built the road from Goshen to Sumner, and that from San Fernando via Los Angeles to Spadra. In all, it built for the Southern Pacific 143.65 miles, including the stretch from Gilroy to Tres Pinos. In 1874 the Contract and Finance Company was dissolved and the Western Development Company took its place.

The Western Development Company was incorporated December 15, 1874, for the announced purpose, among other things, of carrying on construction, manufacturing, mining, mercantile, mechanical, banking, and commercial business in all their branches, and also for the purpose of constructing, leasing, and operating all kinds of public and private improvements. That is to say, its powers were made as extensive as could well be imagined. Stanford, Hopkins, Huntington, and

Crocker each held one-fourth of the stock.16

Under date of February 2, 1875, the Western Development

¹⁶ Articles of incorporation are printed in Colton case, pp. 5475-77, testimony P. 8 Douty. See also ibid., pp. 2993-95, testimony Reynolds. The material and account to repairs possessed by the Contract and Finance Company were turned over to the Westen Development Company at this time at a valuation of \$431.530.53.

any agreed to construct a railroad and a telegraph line routes selected by the Southern Pacific, between certain led termini. The mileage actually built was that from ler to San Fernando, from Spadra to Fort Yuma, and Goshen to Huron. Bills were rendered for this work basis of \$72,000 per mile, or \$29,153,520 for 404.91 half in Southern Pacific first mortgage bonds and half in

addition to its contract with the Southern Pacific, the ern Development Company undertook certain miscelus construction, including work on the Northern Railway, he San Pablo and Tulare Railroad, the building of steamer the Central Pacific, bridges and buildings for the Central ic and Southern Pacific, general repairs for the various anies controlled by the associates, and even finally private ences for Hopkins, Stanford, and Crocker. In short, g its existence the Western Development Company, becompleting the major part of the Southern Pacific, did ental building of any sort which the associates desired to done.

ic Improvement Company

he death of Mr. Hopkins in 1878, and the temporary linguists of Mrs. Hopkins to participate in the financing w construction, together with the death of Mr. Colton in the year, led Stanford, Huntington, and Crocker to close e affairs of the Western Development Company, and to the their more or less speculative building enterprises a new organization. This new company, incorporated mber 4, 1878, was known as the "Pacific Improvement cany." Its relations to the Southern Pacific and to the ates were the same as those of the Western Development

olton case, pp. 362-65, 7806-22, testimony F. S. Douty. The actual payments the result of certain adjustments, slightly less.

Company, except that Mr. Colton, who had taken one-ninth of the Western Development Company stock in 1875, was not a stockholder, and that Mrs. Hopkins at the beginning took no part. Even the capital stock was placed at the same amount, \$5,000,000.

The main accomplishment of the Pacific Improvement Company was the construction of the Southern Pacific between Mojave and The Needles. Besides this, however, it extended the Southern Pacific from Soledad to San Miguel, built the Southern Pacific in Arizona and the Southern Pacific in New Mexico, completed the California and Oregon, and Oregon and California railroads, and continued the Northern Railroad from Willows to Tehama. The contracts made were similar to those executed by the Western Development Company, although the consideration varied.¹⁸

The Pacific Improvement Company is still in existence. After the construction work for which it was incorporated was completed, Mr. Huntington sold his stock to the Hopkins estate. This gave to the Hopkins interest, then represented by Mr. Searles, possession of 50 per cent of the stock of the Pacific Improvement Company. The other 50 per cent remained in the hands of the Stanford and Crocker interests. At a later date the Searles stock passed to the University of California. The Pacific Improvement Company is now in process of liquidation. It owns some thirty town sites, a considerable amount of real estate, including much unimproved property in the Potrero district of San Francisco, land in the Monterey peninsula, and other property in Buffalo, New York. It has, besides, the stock and bonds of certain railroad companies, stock of the Carbondale Coal Company of Washington, and of the Oakland Water Front Company of Oakland, California, and what is still more important, it holds a large number of bills receivable covering property of all sorts which it

¹⁸ United States Railway Commission, p. 2701, testimony F. S. Douty.

has sold in recent years but which has not been entirely paid for. The Pacific Improvement Company's construction outfit was sold to the Central Pacific in 1883.

The last of the construction companies, the Southern Development Company, became responsible for construction east of the Arizona state line when the Pacific Improvement Company left the field. It was of minor importance and may be dismissed with a word. In respect to ownership and operation it resembled the Contract and Finance Company, the Western Development Company, and the Pacific Improvement Company.

Identical Control of Companies

There is a great deal of history about the operation of the various construction companies mentioned, that has not been, and perhaps never will be, written. The men out on the road seem to have known little about any of them. The contact of these men was with Stanford, Huntington, Hopkins, and Crocker. They neither knew nor cared whether they received orders from the associates in their capacities as directors of the Central Pacific or of the Southern Pacific, or as stockholders in one of the construction companies. Nor was it easy for them to keep informed. The same construction force moved from place to place. The same man in the same pay-car paid off employees of the Central Pacific, the Southern Pacific, and the construction companies indiscriminately.19 The same general shops furnished track materials.20 The same equipment was found on all the different lines, except perhaps on the northern division. There was small wonder that even the higher engineering officials were unable to locate accurately the stretches built for each of the principal companies which they served, nor that men under them should have been altogether confused.

28 Ibid., pp. 533-35, testimony Luckett.

¹⁸ United States v. Southern Pacific, pp. 553-55, testimony Redington.

As a matter of fact, the various corporations interested in the building of the Southern Pacific were, after 1870, only different manifestations of the activities of one group of men. It does not appear that any attempt was ever made to interest outside investors. On the contrary, Hopkins, Huntington, Colton, and perhaps the other partners as well, agreed that if anything happened to one of them, their stock in the Western Development Company should not go to outside parties until the existing stockholders had had a chance to take it.²¹

This was a distinct contrast to the attitude of the same men when the Contract and Finance Company was formed, and indicates that they anticipated no such difficulty in raising funds as they had experienced when they built the Central Pacific. Had this not been true, it is probable that they would have let the Southern Pacific alone, competition or no competition.

Construction Financing

Under the terms of their contracts with the Southern Pacific, the construction companies received substantially all of the stock and bonds which that company put out. The same parties were, therefore, directly or indirectly in control both of the railroad and of the companies which did work for the railroad. These securities had, however, no market for many years, at any price. County donations, of which there were a few, also yielded but little, and the federal land grant was not easily or early sold. The real source of financial supplies for the Contract and Finance Company and its successors, the Western Development and the Pacific Improvement companies, in their work upon the Southern Pacific, were the Central Pacific, as a corporation, and the associates as individuals.

As in the case of the Contract and Finance Company, the associates paid no money on their stock subscriptions, but de-

²¹ Colton case, p. 7637, Colton to Huntington.

posited funds in varying amounts which were credited to them as loans. Interest was paid on these advances at rates varying from 6 to 10 per cent. It appears that the contributions by the associates to the Western Development Company began to be considerable in May, 1876. By January, 1877, they had reached the sum of \$3,421,458.35. By March, 1878, the total advance was in the neighborhood of \$11,000,000. It remained at this figure through 1878, and the major part of 1879. The largest contributions were made by the estate of Mark Hopkins and by Collis P. Huntington, though both Crocker and Stanford kept substantial balances. There is no record of the size of advances made to the Pacific Improvement Company, but we know that the same general practice was continued.

In addition to the advances made by the Huntington group, the construction companies benefited substantially by the assistance rendered them by the Central Pacific. This was a sort of help which the Central Pacific itself and the persons who built it had never known. It took a variety of forms. A very obvious service which the Central Pacific could and did offer was the operation of sections of the Southern Pacific as fast as completed in connection with the Central Pacific main line. Besides this, the Central Pacific acted as banker when the construction companies had spare funds. More important still, the Central Pacific on occasion lent considerable sums to the Western Development Company. This was later denied by representatives of the Central Pacific, but the evidence seems conclusive that the loans were made.²²

Similar advances were probably made by the Central Pacific to the Pacific Improvement Company, 23 and to the Contract and Finance Company, sometimes without interest. Money in the Central Pacific sinking fund was invested in this way,

²² Colton case, pp. 231-32, testimony F. S. Douty; United States Pacific Railway commission, pp. 3626-27, testimony F. S. Douty.
²³ United States Pacific Railway Commission, p. 2832, testimony Leland Stanford.

at interest.24 Like use was made of surplus funds belonging to the Occidental and Oriental Steamship Company, which the Central Pacific was holding, until the Union Pacific discovered the matter, and, being interested in the money, demanded that its share be handed over.25 There is even evidence that the associates borrowed money from the Central Pacific between 1874 and 1878, and that the treasurer of the company entered the sums taken on so-called "cash-tags," carrying them as cash in his accounts.26 How much all these transactions amounted to, it is very difficult to say, but it is probable that the aggregate was large.

Profits of Associates

There is no way of estimating the profits which Stanford, Huntington, Hopkins, and Crocker drew out of the Western Development, Pacific Improvement, and Southern Development companies. We know they were great, because the associates died very rich men. Mark Hopkins engaged in no important enterprise outside of his hardware business, except in railroad construction and operation, and yet in 1878 he left an estate appraised at over \$19,000,000. Eleven years later, Charles Crocker's estate was appraised at \$24,142,475.84.31 Stanford's estate was not appraised in 1893, or at least no figures of value were made public, and Huntington did not die until long afterwards. Inasmuch as the associates up to 1878 were all interested in the same business together, and since the most important of their investments were in railroad construction work, it is fair to assume that the profits of the construction companies were considerable. Whatever they were it must, however, be remembered that they consisted in the main of Southern Pacific securities and of California real

United States Pacific Railway Commission, p. 2994, testimony C. F. Crocker.
 Colton case, pp. 7646-54, 1586.

²⁶ Ibid., pp. 9669-73, testimony Charles Crocker.

²⁷ San Francisco Examiner, October 8, 1889.

of the Central Pacific near Roseville, and rat it a nuritwessely direction to Redding toward the Overgon houndary. All these lines were directly under one operating material.

A second important part of the system was the Tailfirman Pacific between Sacramento and Valleja, with a branch from Davis north to Marysville, and another from Naga Junemum to Calistoga. The ownership of the third purpose was vessed in the Northern Railway. This company had been that well in 1871, and had projected a line from Woodland, on the Tailfornia Pacific, to Tehama, of which \$2.30 miles were numbered in 1875. In 1878 the company built from California to Martinez, and from Benicia to Suisan, and still later it constructed a line from Benicia to Fairfield. This last hit of rail enabled Central Pacific trains to run from Sacramente to San Francisco, via Benicia instead of casting from the Tailfield.

CHAPTER VIII

ORGANIZATION OF THE CENTRAL PACIFIC-SOUTHERN PACIFIC SYSTEM, FROM 1870 TO 1893

Extent of System

By 1877 the Central Pacific-Southern Pacific combination was in control of over 85 per cent of all the railroads in California, including all the lines of importance around San Francisco Bay, except the San Francisco and North Pacific Railroad, and in the Sacramento and San Joaquin valleys. Not only had the associates established the monopoly which they desired, but the operations of their system had reached an extent which they themselves would have thought inconceivable a few years before. The operated mileage of the Central Pacific-Southern Pacific line on June 30, 1877, was 2,337.66 miles, the capitalization \$224,952,580, and the gross earnings \$22,247,030. There was a continuous stretch of road from Ogden to Sacramento, San Francisco, and Oakland, and from these cities to Los Angeles and Yuma, by way of the San Joaquin Valley; while a line from Mojave to the Colorado River and The Needles was in course of construction.

Legally and technically, this comprehensive system was divided into five parts. The original Central Pacific Railroad ran from 5 miles west of Ogden to Sacramento. In 1870 this company consolidated with the Western Pacific Railroad, operating between Sacramento and San José via Stockton, the San Francisco, Oakland and Alameda Railroad, which connected the Western Pacific with the city of Oakland, the S Joaquin Valley Railroad branch from Lathrop to Goshen, a the California and Oregon Railroad, which left the main list

The Central Pacific near Roseville, and ran in a northwesterly mine to Redding toward the Oregon boundary. All these steet directly under one operating control.

Ascend important part of the system was the California between Sacramento and Vallejo, with a branch from Sacramento and Vallejo, with a branch from Sacramento and Vallejo, with a branch from Sacramento to Marysville, and another from Napa Junction Clistoga. The ownership of the third portion was vested to Northern Railway. This company had been chartered Pacific, to Tehama, of which 82.20 miles were combin 1875. In 1878 the company built from Oakland to Sacramento a line from Benicia to Suisun, and still later it control line from Benicia to Fairfield. This last bit of road Central Pacific trains to run from Sacramento to San San Pablo and Tulare, completed about the same time as sand from Oakland to Martinez, connected the Northern with Tracy on the main line of the Central Pacific.

The fourth part of the Huntington-Stanford system was ♠ Northern Division of the Southern Pacific Railroad from Francisco through San José to Soledad and Tres Pinos. Tres Pinos line has been referred to in the previous chap-The extension from Gilroy to Soledad up the Salinas Was in operation by 1877, and formed the first part of brute which later became the coast route to Los Angeles. Lefth and last part of the system was the Southern Division the Southern Pacific Railroad from Goshen to Mojave, Los legeles, and Yuma, with branches from Alcalde to Huron, d from Los Angeles to Wilmington. In addition to the in groups mentioned, there were certain minor extensions. thas the railroads from Sacramento to Shingle Springs (the tramento Valley and Placerville Railroad), from Stockton Milton (the Stockton and Copperopolis Railroad), and from ers to Oakdale (the Stockton and Visalia Railroad)

Lease and Stock Control

The various parts of the system were held together by a combination of leases and stock control. The associates in 1877 held all or a majority of the stock of each railroad company which has been mentioned. Usually this stock had come to them in their capacity as shareholders in the various construction companies which had built the roads. In some cases, however, as with the California Pacific and the Northern Division of the Southern Pacific, the greater part of it had been acquired by purchase. But the associates in most instances preferred to add to their control by stock ownership the further security of a lease-a procedure which had the additional advantage of simplifying the conditions under which the companies were operated, by concentrating operations under a single management. Only in the case of the Northern Division of the Southern Pacific do they seem to have temporarily departed from this procedure, and this exception can probably be explained by the special circumstances of the case.

So long as the same parties held all the securities of all the companies in the Central Pacific-Southern Pacific system, it made little difference how payments under the various leases were determined. Yet the possibility that the Central Pacific might sometime divest itself of some portion of its property, was kept in mind, and rentals were fixed so that in most cases they were materially less than the net earnings of the leased mileage. This was probably not true of the Southern Pacific in early years, but it had become so by 1880. In form, the leases showed surprising variety. The rental of the Northem Railway to the California Pacific in 1876 was at the rate of \$1,500 per mile per year. Mr. Stanford thought that this was based on an estimated cost of construction. In 1879 the same property was leased to the Central Pacific for a payment

¹ Colton case, pp. 1522-24, 1529.

² United States Pacific Railway Commission, pp. 2791-92, testimony Leland Stanford.

of a given sum per mile for each piece of equipment passing over the road. That is to say, 25 cents per mile was paid for each passenger or freight locomotive, 20 cents for each passenger car, and 8 cents for each freight or caboose car.3 This proved to be a very expensive rental, and was changed to a monthly payment of \$47,500.4

The lease of the California Pacific to the Central Pacific in 1876 carried a rental of \$550,000 per year, plus threefourths of the net earnings of the California Pacific above that amount. The Central Pacific guaranteed principal and interest on \$3,000,000 of bonds. This was changed to a flat payment of \$600,000 per year in 1879.5 The Central Pacific leased the Amador branch between Galt and Ione for \$3,500 per month. In the case of the Stockton and Copperopolis, however, it undertook only to pay principal and interest on \$500,000 of thirty-year bonds, at 5 per cent, with the provision, however, that the net earnings should apply on the Stockton and Copperopolis floating debt.6 These variations, if they show nothing else, are persuasive that the associates had no standard method of procedure but suited their arrangements to the facts in each individual case.

Lease of Southern Pacific

Perhaps the most interesting relations between the different companies in the Huntington-Stanford system were those existing between the Central Pacific and the Southern Pacificthe Central Pacific's most important extension. It has already been noted that during the early period of construction the Southern Pacific lines south of Goshen were turned over to the Central Pacific operating department as fast as they were completed. At one time the authority of some Central Pacific

¹ Colton case, pp. 1524-29.

^{*} Ibid., pp. 1310-13.

* United States Pacific Railway Commission, p. 3445, testimony B. H. Miller, Jr. For terms of leases see especially United States Pacific Railway Commission, pp. 3443-53. testimony of E. H. Miller, Jr.

officials reached east to New Orleans, though the general super intendent, Mr. Towne, seems never to have had jurisdictio beyond Vermillionville, 144 miles from New Orleans.⁷ The 24 vantages of this arrangement were obvious. Under the lease the Central Pacific paid the Southern Pacific \$500 per mil per month rental, less \$250 per mile per month to cover operat ing expenses, or a net sum of \$250 per mile per month. A amended in 1879 and 1880, the leases made no mention of the \$500 payment, but the Central Pacific engaged to keep this Southern Pacific in good repair, and to pay \$250 per mil monthly.8 In its first form the lease contained the implicated that the operating ratio of the Southern Pacific was only per cent, and it has been suspected that this was deliberated arranged in order to assist Mr. Huntington in disposing d Southern Pacific securities in New York. The lease wa originally terminable on twelve months' notice, but in 1884 on demand of New York bankers who contemplated the pure chase of Southern Pacific bonds, it was changed to run for at least five years.

The fact has already been mentioned that the lease of the Southern Pacific system to the Central Pacific never included what was known as the Northern Division, running from Sat Francisco through Gilroy to Tres Pinos and from Carnader to Soledad. Its officers reported directly to the executive officials of the Southern Pacific Company, and not to Ma Towne. The difference in treatment of this part of the line was striking. The Northern Division lay west of the Company, and was separated to some extent from the lines of the San Joaquin Valley; yet it gave the main system contracted to the important city of San Francisco, and shows

⁷ United States v. Southern Pacific, p. 708, testimony Julius Kruttschnitt. This was case brought in 1915 before the District Court of the United States for the District of United order to compel the separation of the Central Pacific from the Southern Pacific railress. The suit was brought under the Anti-Trust Law of 1890, and in the course of the testimon the history of the Southern Pacific was very fully brought out.

⁸ Colton case, pp. 814-26.

have been operated in close harmony with its connections at San José.

One suspects that Mr. Huntington desired to separate the Central Pacific and the Southern Pacific in the public mind in order that he might more successfully oppose Mr. Scott's Texas and Pacific plans at Washington. "I think it unfortunate," he wrote in 1875, "that he [Stanford] should so closely connect the Central Pacific with the Southern Pacific, as that is the only weapon our enemies have to fight us with in Congress." 9 "I think it important," he said in another letter about the same time, "that the Southern Pacific should be disconnected from the Central as much as it well can be. And . . . I think it should have a superintendent that does not connect with the Central Pacific, although I think it would be difficult to get a man as good as Towne." 10 Opinions like these were likely to perpetuate distinctions between the Central Pacific and the Southern Pacific railroads which could not be explained on other grounds.

Arrangement Reversed

A second stage in the connection between the Central Pacific and the Southern Pacific companies began in 1885 when a lease of the Central Pacific to the Southern Pacific took the place of the earlier arrangement in which the Central Pacific was the lessee. It appears that Timothy Hopkins, treasurer of the Central Pacific and director of the Southern Pacific Railroad of California, received a telegram from Mr. Stanford in the summer of 1884, asking him to come to New York. When Hopkins arrived he found Stanford, Huntington, and Crocker, and it was explained to him that the meeting was desired in order to go over the affairs of the associates generally, and in particular to take up the question of the

Colton case, pp. 1643-44, Huntington to Colton, May 28, 1875.

organization of a new company for the purpose of holding and operating the railroad companies that were owned by the associates and controlled by them, both those under the management of the Central Pacific and those east of El Paso in Texas and Louisiana.¹¹ The meeting was recognized as important and minutes were kept, which have been preserved.

There were several circumstances which made a reorganization at this time desirable. In the first place, the period of exceptional profits for the Central Pacific was passing away with the decline in the mining business in Nevada and the opening of other transcontinental lines. In the second place, the Southern Pacific was beginning to realize the earning power which it was to have as a completed road. It had now a through line to New Orleans; it reached San Francisco while the Central Pacific did not; it was handling 45 per cent of the transcontinental business in 1885; and while it could hardly yet be called a profitable enterprise, its prospects were bright. Southern Pacific bonds were first sold in New York in considerable quantities in 1880, when they brought between 86 and 90. Except on the supposition that the ownership of the Central Pacific and Southern Pacific was identical, there was beginning to be reason for the owners of the latter to feel dissatisfied with a lease like that of 1880, which compelled them to be contented with a fixed return.

Stock Holdings

On this last point the evidence, though not entirely conclusive, offers some interesting suggestions. Up to 1880 the number of stockholders in the Central Pacific remained small. Mr. Huntington had stock of the four associates for sale, and made efforts to place it in New York, but without success. In 1878 the report of the Central Pacific Railroad to the Cali-

II United States v. Southern Pacific, p. 655, testimony Timothy Hopkins.

fornia Railroad Commission showed 82 stockholders, of whom 36, with a total holding of 432,563 shares, were residents of California. Mark Hopkins held 102,812 shares when he died in that same year, and Mr. Huntington, Mr. Stanford, and Mr. Crocker presumably possessed equal amounts. During the early eighties, however, while the Central Pacific was paying substantial dividends, large quantities of stock were sold in Europe. James Speyer has testified that when he came into the New York office of Speyer and Company, some time between 1883 and 1885, large blocks were held in England and Holland. The sales had been made before 1884, probably at a price above 50.

No record of the amount disposed of in these years is available, 12 but it is known that in 1884 the number of shares standing in the names of Huntington, Stanford, Crocker, and the Hopkins interests was considerably less than a majority of the stock outstanding.13 Mr. Jackson, employee in the secretary's office of the Central Pacific in 1885, estimated the amount at from 30,000 to 35,000 shares apiece.14 According to Mr. Brown, who inventoried the stock of the associates in 1884, the combined holdings of Stanford, Huntington, Crocker, and Mrs. Hopkins, including stock in the name of the Pacific Improvement Company, were 157,535 shares out of a total outstanding of 592,755 shares at this date. 15 Timothy Hopkins later suggested that Brown's figures might have included only stock free and available, and that the associates might have owned other stock pledged as collateral, but this was only a suggestion, without proof. As final bits of evidence, it is on record that Crocker possessed 34,049 shares of Central Pacific stock at his death in 1889,16 while Stanford told the

¹¹ United States v. Southern Pacific, pp. 1191-96, testimony James Speyer.

¹³ Ibid., pp. 613-18, testimony George T. Klink.

¹⁶ Ibid., p. 645, testimony George R. Jackson.
25 Ibid., p. 1695, Defendant's Exhibit No. 21.

¹⁶ Ibid., p. 871, inventory of Charles Crocker estate, filed July 12, 1889.

United States Pacific Railway Commission in 1887 that I owned 32,000 shares.¹⁷

The conclusion to which this evidence leads is that Hunt ington and his friends did not own as much as 30 per cent of the Central Pacific shares outstanding when they met together in New York in 1884. Their control of the company depended on the proxies which were sent them, and in particular upon the fact that the individual liability imposed on corporation stockholders under California law led new purchasers of Central Pacific stock to delay recording their ownership, or even to place their stock under the name of third persons in New Dividends were collected by presentation of coupon clipped from stock certificates. 18 Mr. Klink testified that the majority of the stock was voted by proxy in 1885, and that the bulk of it was in the name of people in the New York office of the company. On the other hand, during the period in which the ownership of the Central Pacific became scattered the stock of the Southern Pacific continued to be closely held by the original associates: Stanford, Huntington, Crocker, and the estate of Mark Hopkins.

It is not difficult to understand why the associates should have gradually shifted their main interest from the Central Pacific to the Southern Pacific if we remember that their interests were widely extended as the result of their building enterprises in Southern California, and that Central Pacific securities were the only parts of their holdings on which they could realize in cash. Southern Pacific stock and bonds had me market in New York; Central Pacific stock and bonds had such a market. Doubtless, the associates could not have afforded to dispose of their Central Pacific holdings if this would have imperiled their control of the Ogden route, but such a result did not necessarily follow, as we shall see. Have

¹⁷ United States Pacific Railway Commission, p. 2657, testimony Leland Stanford.

¹⁸ United States v. Southern Pacific, pp. 615, 645, testimony George T. Klink.

ing sold Central Pacific securities in large quantities, however, it was natural for the Stanford-Huntington group to wish to make the company in which their main interest now lay a dominant partner in the Central Pacific—Southern Pacific combination. And this is probably the explanation of the transaction which we are about to describe.

New York Meetings

Let us return to the meeting of Huntington and his assotiates at New York in the summer and fall of 1884, at which the details of the reorganization were worked out. The first business there considered was the purchase of the interest of me T. W. Pierce in the Galveston, Harrisburg and San Antonio Railway and the making of certain adjustments of interests of the associates in connection therewith. The next was the taking of an inventory of securities on hand in New York and those used as collateral for the payment of liabilities of Stanford, Huntington, Hopkins, and Crocker. On Septemer II the question of the reorganization of the Southern Pacific system was taken up, and the following order of busiress was agreed upon: (I) consolidation of all the lines of the Southern Pacific system in one company; (2) separation of Central Pacific business from Southern Pacific business; (3) easing of the Central Pacific system to the Southern Pacific system (new organization); (4) general consolidation of lines from San Francisco to Newport News.

The fourth item referred to a proposal that Stanford, Crocker, and the Hopkins estate enter with Huntington into the warership of the Chesapeake and Ohio Railroad, opening the way for a transcontinental rail line from coast to coast. This after was declined; no further reference need be made to it.¹⁹

On September 25, the associates came together again, and rom that time until November 7, meetings were held almost

³⁹ United States v. Southern Pacific, p. 666, testimony Timothy Hopkins.

United States Pacific Rail owned 32,000 shares.¹⁷

The conclusion to whic ington and his friends did the Central Pacific shares c in New York in 1884. The on the proxies which were the fact that the individua stockholders under Califor tral Pacific stock to delay to place their stock under York. Dividends were co clipped from stock certific: majority of the stock was v bulk of it was in the name of the company. On the which the ownership of th the stock of the Southern by the original associates: the estate of Mark Hopkin It is not difficult to ur have gradually shifted the Pacific to the Southern

Pacific to the Southern interests were widely exterenterprises in Southern C securities were the only pacould realize in cash. Southarket in New York; C such a market. Doubtle afforded to dispose of the would have imperiled the such a result did not neces

¹⁷ United States Pacific Railwa 3
18 United States v. Southern Pa

daily. From the meager reports of the proceedings kept by their secretary, we glean that more than one plan of adjustment was considered. It was agreed at one time that the Southern and Central Pacific companies might terminate their leases, and that the Central might lease from the Southern that portion of the railroad between Goshen and Mojave. Then a running arrangement was to be made between the Central Pacific and the Southern Pacific Company (new organization) to cover the line from Mojave to San Francisco and other California points.²⁰

This plan was not finally adopted. On October 1, Leland Stanford was appointed a committee of one to formulate his proposed method of leasing the several roads which should form the through line of the Southern Pacific Company. It was agreed that the stock of the Southern Pacific Company, which had been organized the previous year, should be raised to \$100,000,000. During the following three weeks the discussion turned largely about the details of the Southern Pacific organization and the best methods of liquidating the Southern Development Company. On November 5, the question of leasing the Central Pacific system to the Southern Pacific came up. It was agreed to lease the property, and temporarily to fix the rental at fixed charges and a guarantee of 2 per cent upon the capital stock, plus all the earnings of the Central Pacific system over and above that percentage until the amount should reach 6 per cent. All profits beyond 6 per cent were to go to the Southern Pacific Company. The last meeting was held on November 7.

Reorganization of System

The result of these exhaustive discussions was a threefold operation. In the first place, the Southern Pacific Company of Kentucky, organized in 1884 with a charter granting power

²⁰ United States v. Southern Pacific, pp. 1688-1702, Defendant's Exhibit No. 21.

to do most things in the world provided it did not operate in Kentucky, issued \$100,000,000 in capital stock, and acquired henchange for its certificates the stock of the Southern Pacific aroad Company and that of the subsidiary companies cominting the through line to New Orleans.21

- Secondly, the Southern Pacific Company leased the South-Pacific Railroad and these same subsidiaries for ninetysine years from the 10th of February, 1885, undertaking to keep the properties in repair, and to pay over 931/2 per cent of the net profits to the lessors in specified proportions.

In the third place, the Southern Pacific Company leased the Central Pacific Railroad for ninety-nine years from the first of April, 1885, for a rental which might vary from \$1,200,000 to \$3,600,000 a year, according as the earnings of the Central Pacific and leased lines north of Goshen might be small or large. This substantially corresponded to the 2 per cent and the 6 per cent on the capital stock mentioned in the minutes of the associntes. The Southern Pacific assumed all Central Pacific obligations except the payment of the principal of indebtedness incurred or guaranteed by that company, and various minor adjustments and assignments were made which it is not necessary to describe.22

Mr. Stanford has testified that in fixing the rental of \$1,200,000 the business of the previous years and the prospects of competition in the future were taken into account.28 The

[&]quot;United States v. Southern Pacific, pp. 621-22, testimony George T. Klink. It has suggested that Huntington had the charter of the Southern Pacific Company taken in Kentucky, in order to enable the company to conduct its suits in California in the ral and not in the state courts.

isign and not in the state courts.

23 J. M. Bassett said of the action of Kentucky in granting a charter to the Southern Profic Company, that it amounted to granting a letter of marque to that company on the sessition that it make no reprisals in Kentucky. He argued that the lease of the Central Pacific was defective because its duration was to be greater than the life of the Central Pacific suder its articles of incorporation, because the liability of Southern Pacific stockholders was not unlimited as in the case of California corporations, and because the rule of comity under which foreign corporations operated in California could not be expected to apply to a superation which was forbidden to do business in the state of its nativity. None of these objections, however, proved to have any practical importance.

³ United States Pacific Railway Commission, pp. 2812-13, testimony Leland Stanford.

United States Pacific Railway Commission approved the terms of the lease two years later.

In 1888 the minimum rental was changed to \$1,360,000 and the maximum to \$4,080,000, in consequence of the extension of the Central Pacific from Delta, California, to a connection with the Oregon and California Railroad at the Oregon boundary. In 1893 the Southern Pacific complained that it was suffering very considerable losses under the lease and the terms were once more revised. Instead of a rental with a fixed minimum, the Southern Pacific now agreed to pay \$10,000 a year for the leased property, plus all net earnings up to 6 per cent on the capital stock of the Central Pacific Railroad and one-half the excess over 6 per cent.²⁴

It was provided in the fourth article of the new lease that if the Southern Pacific should make any advances for payment on account of the Central Pacific, it should be entitled to receive interest on these advances at the rate of 6 per cent. On the 22d of March, 1894, this fourth article of the amended lease was again changed by inserting the words "lawful interest" instead of "interest at 6 per cent per annum" upon advances which might be made by the Southern Pacific Company. At the same time it was agreed between the Central Pacific and the Southern Pacific that if at any time it appeared that, by

NET PROFITS AND RENTALS CENTRAL PACIFIC RAILROAD, 1885-93

Period	Net Profit Central Pacific Railroad Company	Rental Paid to Central Pacific Railroad Company	Excess of Rental over Net Profit
April to December, 1885	\$ 1,482,033	\$ 1,482,033	*********
1886	1,324,998	1,324,998	game added
1887	1,086,733	1,200,000	\$ 113,207
1888	962,830	1,360,000	397,170
1880	1,035,418	1,360,000	324.582
1890	999,223	1,360,000	350,777
1801	2,144,425	2,144,425	**********
1802	861,874	1,360,000	498,127
1893	784.717	1,360,000	575.283
Totals	\$10,682,251	\$12,951,456	\$2,269,206

Brice Report, 53d Congress, 3d Session, January 28, 1895 (Senate Report, No. 830, Serial No. 3288).

²⁴ The following table shows the result of operation under the lease for each year from 1885 to 1893:

operation of the agreement, either party was being bened at the expense of the other, the agreement should be rised and changed. On the whole the earnings of the Cenl Pacific were less than were expected under the lease, parularly during the years 1888-93. Yet part of the difficulty ose from preferential solicitation of freight over the Sunset ute, and for the rest the rental of the property was adjustle, as experience showed.

CHAPTER IX

THE CASE OF DAVID D. COLTON

Meeting the Associates

During the seventies the associates took a new partner. This was David D. Colton, one-time sheriff of Siskiyo County, brigadier-general of militia, second to Broderick in the famous Terry-Broderick duel, and still later colonel of Unite States Volunteers. In spite of these various military titles Colton seems never to have seen service. But he had been active in California politics as a delegate of the Union Demo cratic party in 1861, and as chairman of the state central committee of that organization, and was widely known throughout the state. He was a man of fine physique, and endowed with a quick if not a profound intelligence.

Colton first made the acquaintance of Charles Crocker in 1867, when the latter was on his way to inspect the work of construction of the Central Pacific beyond Elko. Three years later Crocker invited Colton to accompany him to Evanston California, where he intended to look over, and perhaps to pur chase, certain coal mining properties. According to Crocker Colton said that he also would like to have an interest in the mines in question. Crocker, who had in the meantime completed negotiations for the purchase, replied with an offer to make Colton president and manager of the coal company if h would buy a thousand shares of its stock, which Colton immediately did.¹

Colton case, pp. 8839-42, testimony Charles Crocker. A discussion of the relation between Colton and the Huntington group which differs from that given in the text is parented in Russell, "Stories of the Great Railroads," 1914.

The relations thus begun rapidly became more intimate. As early as 1868, Mr. and Mrs. Colton had invitations from Mr. Crocker and passes to travel on the Central Pacific. In 1869 or 1870 the two families visited the Yosemite together, and in 1871-72, when the Crockers went to Europe and the two Crocker boys were left behind at a military academy in Oakland, the Coltons looked after the children generally, and had them at the Colton house for week-ends.²

It was through his acquaintance with the Crockers that Mr. Colton met the other members of the Stanford group. Mr. Huntington was favorably impressed with him; Stanford and Hopkins less so. Huntington was becoming dissatisfied about this time with the amount of work done by his associates, and the suggestion soon made that Colton join the other memlers of the group and share the burden of managing the Cental Pacific enterprise with them, met his approval. "I was worked," he said later, "up to my full capacity, whatever that might be. Mr. Crocker was in the habit of going to Europe and having a good time and the Governor owned ranches, and his horses took a great deal of his time; in fact, the Governor never could confine himself right to the office; that is, I don't consider that he could, to close, hard work, and we wanted somebody there to do that work; and Mr. Colton convinced me that he, of all men, was just the man that we wanted." And again, speaking of his partners and of Colton, Huntington said: "He knew I was not satisfied with some things that my associate co-directors were doing there. The way they used to go to Europe and go away from business, while I was working every day in the year almost, and about fourteen hours a day; he knew I was not quite satisfied with the hours they put in." 3 The fact that Mr. Hopkins' health was not strong was an additional reason for taking in a new partner.

² Colton case. pp. 2446-50, testimony Mrs. Colton.

¹ Ibid., pp. 172-73. deposition C. P. Huntington.

Agreement Signed

The result of these preliminary discussions was the conclusion of an agreement, dated October 5, 1874, whereby Colton received 20,000 shares of Central Pacific Railroad stock and 20,000 shares of Southern Pacific stock in return for his promissory note for \$1,000,000, maturing in five years. At the same time it was mutually understood that Colton should share in all the responsibilities and liabilities of the associates for five years in proportion to his stockholdings, and should stand in their shoes, as it were, holding the same positions and relations which they had to the Central Pacific Railroad, and to the Contract and Finance Company. The contract called for no cash payment, for obvious reasons.

Mr. Huntington says he felt in 1874 that Colton was receiving something very handsome, and the opinion was not without some justification. Certainly, in the long run the opportunity to share in the profits of the associates was valuable. Colton was not a man of large means to begin with, yet after two years and three months with the Central Pacific, he inventoried his assets at \$961,506.18,5 and at the time of his death his rent roll alone amounted to \$2,500 to \$3,000 a month.5

This was a very substantial compensation, even for very valuable service. But on the other hand, it is evident that Mr. Colton put himself entirely in the hands of the associates when he signed the agreement and the promissory note which have been described. He not only pledged his services for five years, but he assumed an unconditional liability to pay \$1,000,000 at the end of this period, in return for which he obtained only 40,000 shares of unsalable securities and a right to participate in the management of the associates' property which was re-

⁴ Colton case, pp. 5872-74. See also Colton manuscript, pp. 36-40. It was stipulate that either party might cancel the agreement at any time within two years, upon which stock and promissory note were to be mutually returned, and the parties placed in the sam position relative to each other as before the agreement was made.

⁵ Colton case, pp. 7018-19.

⁶ Ibid., p. 6529, testimony H. K. White.

more within two years. This was a dangerously exposed position. It was not a wise thing even for the Huntington-Stanford group to put Colton in such a predicament, and much indequent difficulty resulted therefrom.

In 1876 the associates served notice on Mr. Colton, dissering his connection with them. Mr. Crocker relates that
colton was very much affected. He said, according to Crocker,
It is generally known that I am here with you, and there is
one knows these relations are only temporary, and it will
enext to ruin to me to have them dissevered now." In fact,
wept. Crocker later testified that he liked the general very
ench, and was touched by his distress. Colton wished him
to go and see the others, and Crocker did so. The result was
that the notice was reconsidered and a second contract made.

After this, Colton bought one-ninth of the capital stock of the
Western Development Company, and commenced to deposit
money with that organization in the same manner as did the
other members of the group.

"Financial Director"

During substantially the whole period from 1874 to 1878, Colton took active charge of the financial affairs of the Huntington group at the San Francisco end. His office and title beginning August 31, 1875, was that of "financial director." Formally he acted under the direction of the treasurer of the company, Mr. Hopkins. Practically he reported to Mr. Huntington and perhaps to Mr. Crocker, more than to Mr. Hopkins, but exercised a good deal of independent initiative. With the operation of neither the Central Pacific nor the Southern Pacific had he anything to do. On the other hand, it was either Colton in San Francisco, or Huntington in New York,

⁷ Colton case, p. 8869, testimony Charles Crocker.

^{*} Ibid., pp. 1058, 1064-66, testimony E. H. Miller, Jr.; p. 8957, testimony Charles rocker.

as we shall presently see, who attended to the negotiation of short-time loans, often necessary to take care of interest on the railroad properties. It was also Colton who had particular charge of the many affairs of the Western Development Company; b it was Colton who was responsible head of the Rocky Mountain Coal and Iron Company's mine at Ione; and it was Colton who took particular interest in finding a market for the output of this corporation.10

From the tone of Mr. Huntington's letters to Colton, it seems as though the former was reasonably well satisfied with the way the business in the West was conducted after 1874. On his part, Colton cultivated the idea that the interests of the five associates, himself included, were inextricably bound together. "I have learned one thing," he wrote in 1878, "we have got no true friends outside of us five People will profess friendship to one of us, just to either try to find out something, or when the time comes, lie about the rest of us. We cannot depend on a human soul outside of ourselves, and hence we must all be good-natured, stick together, and keep our own counsels." 11

Yet, in spite of his assumption of the permanency of his relations with the Huntington group, Mr. Colton certainly understood that his position had no legal security whatever. Of this the episode of 1876 must have been a disagreeable reminder. In particular, as has been observed, there was a reasonable likelihood that he would be called upon to pay his note for \$1,000,000 in 1879, before the Central Pacific and Southern Pacific shares, which secured it, had become salable It is evident that these matters were in Mr. Colton's mind constantly, and gave him great concern. No other reason can be

⁹ Colton case, pp. 2711-12, 478-81, testimony F. S. Douty.

Newell Beeman, superintendent of the Rocky Mountain Coal and Iron Company says that Colton knew nothing about the practical working of the mine. (Colton case, pg 3849-50, testimony Newell Beeman.)
11 Colton case, pp. 7612-13, Colton to Huntington, January 31, 1878.

fered for his efforts to secure title to property with such erish rapidity. How should he protect himself against the pomatic presentation of a note which might require the prifice of all his accumulations to pay? How should he put melf in a position where his income was not wholly dendent on the forbearance of four men, with only one of nom he had ties of personal friendship? If Mr. Colton's oral fiber weakened somewhat under the strain of the situaon, the fact need occasion no great surprise.

Vestern Development Dividend

Some time after 1874 Colton suggested to Crocker that the hries of the associates be raised. They were all drawing 10,000 a year, and were giving all their time for that salary. Colton said it was an insignificant sum. Men such as the mociates ought to have \$25,000 a year, at least. But Crocker replied prudently that a salary of \$10,000 could always be justified, while one of \$25,000 might not be. He preferred to let the matter stay as it was.12

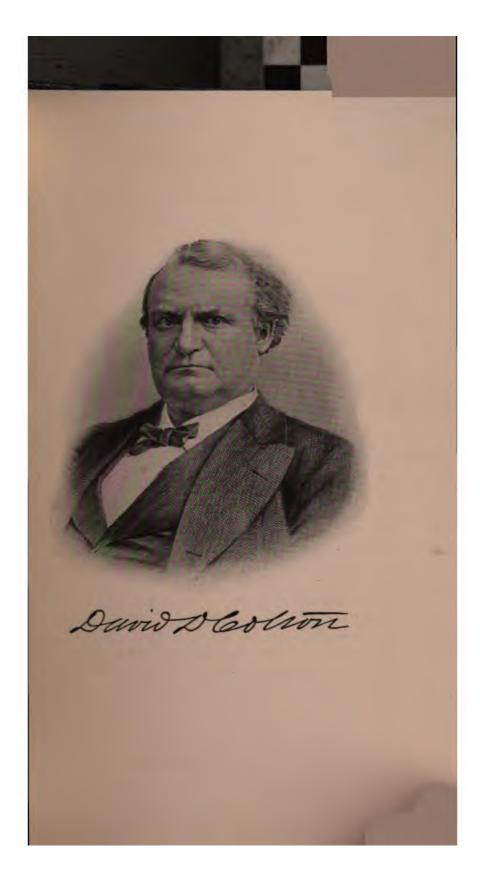
Three years later, when the period of his contract was trawing to a close, Colton took more drastic action by causing he Western Development Company to distribute a substantial part of its assets in the form of a dividend. This provided him with property, upon which as security he might have borrowed considerable sums of money. A dividend was leclared on September 4, 1877, which consisted of \$13.500,xo in Central Pacific stock, \$6,300,000 in Southern Pacific Railroad bonds, and \$1,562,500 in other securities, amounting o between one-half and one-third of the holdings of the Western Development Company. Colton's personal share was ne-ninth.18

Colton case, p. 8915, testimony Charles Crocker.
 United States Pacific Railway Commission, p. 3255, testimony F. S. Douty; Colton se, pp. 423-24, testimony F. S. Douty.

Ostensibly the Western Development Company's dividend was a distribution of surplus profits. In reality it was a division of capital. Nobody knew, in 1877, how great the profits of the Western Development Company had been, nor even whether the assets of the company equaled its liabilities, for the reason that the value of these assets was speculative and uncertain, and if realized on all at once, would have amounted to scarcely anything at all. It was known, of course, that the creditors of the company were also its stockholders, so that the distribution was not quite so reckless as it otherwise might have appeared; but yet the various stockholders were not holders of stock in the same proportions as they were creditors, and the heavier creditors, such as Huntington, might well have felt that their interests were not being sufficiently protected.

Nothing was said about the Western Development dividend to any of the associates at the time it was declared. Charles Crocker was in San Francisco, but knew nothing of it.14 The fact came out, however, in August of the following year, when Huntington was in the West. Stanford, Huntington, and Crocker were all together in one of the Southern Pacific offices when Colton came in, accompanied by a couple of subordinates with their hands full of bonds, and said, "Gentlemen, here are your dividends." Both Huntington and Crocker became at once very angry, and hot words seem to have passed. Huntington said that there was no sense in the dividend-it was wrong, the company ought to pay its debts before it paid a dividend—the stocks and bonds were of no particular value, but their distribution would leave the Western Development Company shorn of its resources, and they must be returned Crocker agreed with Huntington. Colton begged the others not to injure him in the eyes of the employees of the company by compelling a return of the securities, and pledged his honor that he would not part with his shares, and would return them

¹⁴ Colton case, pp. 8883, 8887, testimony Charles Crocker.



if needed. Stanford thought the matter might be passed with this understanding, and it was so agreed, not, however, without a good deal of resentment on the part of Huntington and Crocker.¹⁵

Misappropriation of Funds

The Western Development dividend and Colton's request for a higher salary were, in a measure at least, open and above board. The same cannot be said of a number of other operations—in general, it is true, of minor importance—which took place between 1874 and 1878, and which became known only after Colton's death. How far Colton was guilty of positive dishonesty during these years has been a matter of bitter dispute. There is no question, however, that he drew or credited himself with considerable amounts of money without the knowledge of the other partners, and that no vouchers were ever made out which sufficiently explained these transactions. Charges of embezzlement were even later made and not disproved. Three of four illustrations of such incidents may be given.

1. Salary drawn from the Rocky Mountain Coal and Iron Company. Mr. Colton was made president of this company in 1871 at a salary of \$100 a month. In 1874 the associates agreed that Colton should receive a salary of \$10,000 a year, as partner. No separate mention was made of the Rocky Mountain Coal and Iron Company in 1874, but it is reasonable to suppose that the new salary of \$10,000 covered Colton's work in supervising the coal property, as well as his share in the general administration of the railroad, especially as the coal business took comparatively little of his time. As a matter of fact, however, Colton restricted himself to \$100 a month only during 1871. In 1872 he drew \$400 a month, except during

²⁵ Colton case, pp. 8882-82, testimony Charles Crocker; pp. 36-37, deposition C. P. Huntington.

ington's ethical code was at times, he had no hesitation in pronouncing Mr. Colton guilty of robbery; that he himself was partly responsible was not likely to occur to him. In the second place, Colton's assets at the time of his death were such as to render immediate liquidation impossible, and yet this was precisely the thing most likely to be demanded. Mrs. Colton, the sole heir, was a woman of unusual ability, clear-headed, definite in speech, and, although inexperienced in business, apparently quickly able to understand business problems. She had, moreover, a good adviser in the person of a San Francisco lawyer named S. M. Wilson. Her position was, nevertheless, one of disadvantage, which was intensified by her wish to shield her husband's reputation.

It does not appear that the associates were aware of the true state of affairs during the weeks immediately following Mr. Colton's death. Mr. Huntington wrote cordial though not altogether sincere letters to Mrs. Colton, expressing willingness to serve her in those matters in which General Colton was interested with the associates, 18 and Crocker called at Mrs. Colton's house and wept there while speaking of the death of Mr. Colton. This attitude soon changed, however, and Mr. Crocker became less friendly in his intercourse with Mrs. Colton, and at last ceased to visit her altogether. 19 In fact, all pretense of sympathy with Mrs. Colton was presently abandoned, and negotiations between her and the associates were continued upon a cold business basis.

The attitude of the Stanford-Huntington crowd was officially that they were willing to have Mrs. Colton pay her obligations and continue with them. This meant a settlement of claims arising out of the improper withdrawal of moneys by Mr. Colton, but also more particularly the payment of the

 ¹⁸ Colton case, pp. 2436-39, Huntington to Mrs. Colton, November 15, 1878, and November 21, 1878.
 ¹⁹ Ibid., pp. 2485-92, testimony Mrs. Colton; pp. 8892-99; testimony Charles Crocker.

000 note. It involved, also, for the future continued ent of funds in the Western Development Company, payment of assessments which might be levied upon n Pacific stock. It was insisted, however, that the be settled quickly, partly because Mr. Huntington was o leave the city, and partly because the period for filing against the Colton estate would soon expire.20 he event that Mrs. Colton should not desire to continue em, the associates demanded an accounting in which the es of Mr. Colton on account of the \$1,000,000 note, his of the net indebtedness of the Western Development ny, and the sum of the alleged embezzlements, should against the estimated value of the stock and bonds of Colton died possessed. In estimating the value of Mr. s securities, moreover, the associates declared that the n was not as to the amount which could be realized Ily and after the underlying property had had a chance e itself, but the market value at the time of negotiations. Crocker's testimony on this point expresses very fully tude of the associates. He said:

Ir. Wilson and I had frequent conversations, and he somes asserted we could do so and so with these bonds, that could realize 80 or 90 cents on them. I said in reply, sibly we can; I don't know; it is a matter of speculation; pends on the future of the roads." Sometimes he would a they would bring 80 or 85 cents; and then I would say, y likely they may," but it would require time to do it, and eat deal of management necessarily to bring that out, and rs. Colton desired to realize the full value of these securiafter this lengthy handling of them, all she had to do was to the amount of the note and continue in the company and would manage them for her, as well as we would for ourse, of course, and she should receive the full benefit of our reledge and experience in handling these securities, and we

ton case, pp. 16-32, deposition S. N. Wilson.

would get every dollar out of them we could, and she should have her share to the last cent. Then he would reply: "Well, that can't be. We are determined to go out of this." "Well," I says, "then it is a matter of speculation." 21

Unquestionably these were hard terms, for it was out of the question for Mrs. Colton to continue with the associates in 1879, a fact of which these gentlemen must have been well aware. She did not have the necessary money, she could not afford in any case to risk her livelihood in so speculative an undertaking as building railroads in southern California, and the relations between her and the Huntington group did not savor of trust and confidence. The expressions of willingness to continue to treat Mrs. Colton as one of themselves cost the associates nothing, and were worth as much. Nor was the standard of valuation of the Colton assets offered by the associates, easily to be defended on ethical grounds. Mr. Colton had not played fair, it is true, but on his part he had been led into an improvement agreement and caused to sign a \$1,000,000 note, in at least partial reliance upon the value of the stock of railroads under the associates' control, which was given him in exchange. It was hardly appropriate for the Huntington group now to insist that the collateral security had no value.

Settlement with Mrs. Colton

Hard as the terms were, Mrs. Colton finally acceded to them. By agreement dated August 27, 1879, she turned over 408 shares of the capital stock of the Rocky Mountain Coal and Iron Company, all of the shares which she held of the Occidental and Oriental Steamship Company, all claims to the 40,000 shares of Central Pacific Railroad and Southern Pacific Railroad stock, pledged as collateral for the \$1,000,000 note all of the capital stock of the Western Development Com-

¹² Colton case, pp. 8931-32, testimony Charles Crocker.

pany standing to Colton's credit, and some \$587,500 in par value of bonds of the Central Pacific-Southern Pacific system, of which \$500,000 was in first mortgage bonds of the Southern Pacific Railroad itself. In return for all this, the associates agreed to cancel Colton's note for \$1,000,000, and to release Mrs. Colton from any claims on the part of themselves, the Western Development Company, the Central Pacific, and its allied companies.²²

This settlement left Mrs. Colton with property reasonably valued at half a million dollars, and with an income of perhaps \$28,000 a year. That she withdrew with so much to her credit was due to the interposition of Mr. Tevis on her behalf at the last moment, in consideration of a contingent fee,23 and to the fact that the associates were on the point of floating large amounts of Central and Southern Pacific securities in New York. Mrs. Colton felt, however, that she had been robbed, and in May, 1882, commenced suit to reopen the whole transaction, and to annul the compromise agreement. It has been estimated that this famous suit cost the parties \$100,000 apiece. Mrs. Colton alleged fraud and the withholding of essential facts which the associates should have disclosed by reason of the trust relations which had existed between Colton and his partners. In particular she insisted that the statements given her in 1879 with reference to the affairs of the Western Development Company had been misleading and untrue. She now offered to pay Colton's \$1,000,000 note, and other liabilities, and asked for the return of the securities which she had previously surrendered.

The more important facts developed in this litigation have been dwelt upon in the preceding discussion, and need not be repeated here. The case went to the Supreme Court of the

²³ In the case of the Central Pacific claims, the qualification "so far as known at the time" was introduced.

²³ Colton case, pp. 2815-16, testimony Mrs. Colton; pp. 8943-44, testimony Charles Crocker.

state, where Mrs. Colton was finally defeated. A careful reading of the evidence leads to the conviction that the court was right. Mrs. Colton had done the best she could under the circumstances and was properly held to an agreement she had made with her eyes open, some three years before. Yet the fault of the whole unsavory affair was not hers, nor altogether Mr. Colton's, and the reputation of the associates thereby properly suffered in the public mind.

CHAPTER X

FINANCIAL DIFFICULTIES FROM 1870 TO 1879

Excessive Construction

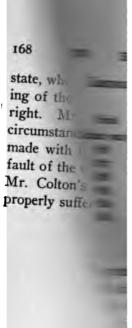
We may now return to the more general considerations affecting Central Pacific finance which characterized the years from 1870 to 1879. There is a good deal of evidence that the years during which Mr. Colton was connected with the Central Pacific enterprise were years of financial difficulty for the associates, due in part to general depression, in part to a disproportionate amount of new construction, and in part to the continued inability of the Huntington-Stanford group for many years to interest eastern capital in western railroads.

During the years from 1869, when the Central Pacific was first opened to Ogden, to 1874, the earnings of the Central Pacific main line, both gross and net, steadily increased. The following table sets forth the facts relating to this progress, as well as figures for the succeeding years from 1875 to 1881.

EARNINGS AND EXPENSES OF THE CENTRAL PACIFIC RAILROAD, 1874-81 1

Period	Gross Earnings	Operating Expenses	Net Earnings
(Calendar years)			
November 6 to			
December 31, 1869	\$ 1,024,680	\$ 777.348	\$ 247.332
1870	7.519.983	6,009.426	1,510.557
1871	8,862,054	5.937.890	2,924,164
1872	11,963,641	8,645.276	3,318, 2 f
1873	12,867,600	7,822,638	5,0 44,9
1874	13,726,561	6.468.145	7.2 58 .4
1875	15,665,082	9.937.465	5.7 27.£

Report compiled by the Commissioner of Railroads, 47th Congress, P. Hos Recuire Documents No. 123, 1882, Serial No. 2030.



EARNINGS AND EXPENSES OF THE CENTRAL PACIFIC RAILROAD, 1874-81—Continued

Period	Gross Earnings	Operating Expenses	Net Earning
(Calendar years)			
1876	\$ 16,994,216	\$ 10,970,599	\$ 6,023,617
1877	16,471,144	12,761,639	3,709,505
1878	17,530,859	12,005,535	5,525,324
1879	17,153,163	11,126,298	6,026,865
1880	20,508,113	12,814,121	7,693,992
1881	24,094,001	14,546,899	9,547,102
	\$184,381,097	\$119,823,379	\$ 64,557,718

The greatest continuous drain upon Mr. Huntington and his friends during the decade from 1870 to 1880 came from the necessity of raising funds to provide for construction in southern California as described in earlier chapters. Had business considerations alone controlled, there is little doubt that this construction would have ceased. It did not pay for itself, and could not be expected to be profitable until the country served had been developed. Indeed, Charles Crocker once declared that when the Southern Pacific was built through the southern San Joaquin Valley, the company could have started with a railroad train at Sumner at the south of the valley and come to Stockton, and with one engine and one train of cars, hauled every living soul that lived in the valley The settlers between Yuma and Sar out at one haul. Bernardino could have been carried in one carload. This was as late as 1876.2

Inability to Get Eastern Capital

It was largely owing to this construction, as well as to the general hard times, that the gross earnings per mile of the Central Pacific and leased lines fell from \$12,068.63 in 1875 to \$7,677.84 in 1879. The Central Pacific did not dare stop

^{*} Crocker manuscript, pp. 40-41.



Naturally Southern Pac more difficult to sell than C ton found that the Souther in the East, even by partie time in California. To ov Pacific stock and bonds in by personal conference with issue of pamphlets or by a papers, sometimes by the natural Stock Exchange. Occasion Southern Pacific bonds in company. But here again no bonds were sold, and a disposed of at any price.

Market for Securities

A good deal of specific available to show the estir Southern Pacific securitie cumulative, and to the ef time for any of these mortgage bonds. Thus S stock: "I don't think it w not think it would have I price: the stock had no i traded in it; that is, in a g might have been done I public market nothing coultowards selling it." Sir Mills, of San Francisco. I have been obtained in the

⁴ Colton case, p. 1961. Huntington 5 Phil., pp. 1706-31. Huntington Colton, December 4, 1875.

¹ Nes. marellaneous depositions

Southern Pacific bonds, and replied that he ese bonds were salable then, that it would have of burgain and sale, and would not have any market value. Mr. Thayer also testified in Pacific bonds were on the stock exchange it, but were bonds no one dealt in, and about informed.

relative field for investment. During the decade 1870. California had grown rapidly in wealth

Population had increased and manufactures develop. In agriculture, fruits, berries, and ladded to the important quantities of grain and dy produced. But the immediate effects of the he transcontinental railroad had been harmful ther than beneficial.

re were several reasons: (1) speculation in and San Francisco Bay had so discounted the he line that the actual opening of communication rather than an advance; (2) the combinulated immigration due to greater facilities the sudden release of a considerable part of the airoad construction, had forced down wages,

art, California merchant had become exposed from eastern distributit (3) droughts decline in the production in Nevada s, all had

overdrawn from \$150,000 to \$350,000 each, and Colton was picking up every dollar outside which he could secure without showing his hand.16

Indorsement of Notes

As a general practice the associates seem to have refused to put their personal indorsement on the notes which they discounted. Huntington was very insistent that no indorsements be given; yet in January, 1878, conditions had grown so bad that Huntington asked the associates to indorse 100 blank notes and send them to him, to be used as a last resort, and this was done in spite of the violent protest of Mark Hopkins. Colton wrote Huntington:

I told him [Hopkins] I felt the wise thing for us all to do. was to stand in and protect all interests against the debts now owing, but to all agree not to incur any more, not to build any more road, or to buy any steamship, or property, either jointly or individually, until we got out of debt, and had the money in bank to pay for what we bought. That proposition just met his views, and he said that if I would agree that we would all live up to that, he would sign 20 of the blank notes, which he did, 10 of each.17

Conditions in California grew worse rather than better after the notes were sent, but those in the East improved, and

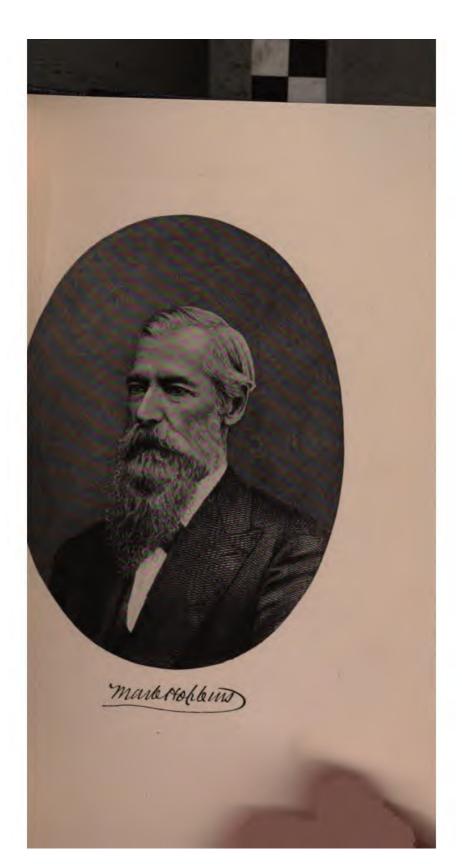
17 Colton case, pp. 7608-14. Colton to Huntington, January 31, 1878.

It is extraordinary that a man in Colton's position with his intimate knowledge of the precarious condition of Central Pacific finance should have allowed that railroad to declare a 4 per cent dividend in October, 1877, great though his personal necessities may have been this was, however, done. In reply to a letter from Huntington criticizing this action, Cotton later wrote:

"I never had the least intimation of objecting to the dividend until some time after was declared. Governor Stanford informed me that you had telegraphed him, advange relative to this October dividend. We discussed it some time afterward in the Board meing and found the whole matter of dividend had been written up in the books, and had goes so far before it had been brought before the Board that it was considered best to let the matter stand as it was.

I did not give the matter any attention outside of the Board meeting, for I felt it was a matter that Governor Stanford was personally attending to.

"I do not, however, see the matter in just the light you do, and think so few will know of it that it cannot hurt us in Washington, for if you who are one of the largest stockholden have not found it out, I do not see much show for outsiders. That there were ample supplus earnings to declare it there is no doubt. So it was a question of policy. I would think in a business way the Government would be glad to see us doing well as prosperous, and evincing ability to pay dividends and all of our debts." (Colton case, pp. 7533-34, Colton to Huntington, November 24, 1877.)



the indorsed notes do not seem to have been used. Yet, of course, the large accumulation of floating indebtedness of the Central Pacific could not be hidden altogether, and the credit of the company was correspondingly impaired.18

Sale of Securities

The first successful negotiations for the sale of Central Pacific and Southern Pacific securities were initiated in 1878 with the firm of Speyer and Company, of New York, and resulted in two agreements, dated the 27th and 28th of January, 1880, respectively. On the former date Huntington agreed to deliver, on or before January 31, 1880, as might be demanded, 50,000 shares of the capital stock of the Central Pacific Railroad at 72, ex-dividend, to Roswell P. Flower, John D. Prince, and Daniel Probst, representing a syndicate formed for the purpose. In case the parties took the stock just referred to, Huntington agreed further to deliver 50,000 more shares within six months from the date of the agreement, at 77. In any event, and provided that the syndicate took the first 50,000 shares mentioned in the agreement, Huntington undertook that no other Central Pacific stock beyond a stipulated amount of 10,000 shares should be sold to any other parties for a period of seven months from the date of the agreement.19

The syndicate which took Central Pacific stock at this time eems to have considered the enterprise a speculation justified by the resumption of dividends by the company, and by the mproving stock market conditions of the time. Mr. Probst

In 1885 the Central Pacific directors authorized the issue of \$10,000,000 in bonds to off the floating debt. (United States Pacific Railway Commission, p. 3019, testimony Crocker.) There is some reason to suspect that Stanford was individually embardin 1878, as a result of the financial stringency in California. Huntington telegraphed on in September of that year to let him know Stanford's financial condition as near as could ascertain it, and proposed to have the Western Development Company assume ford's indebtedness, taking Southern Pacific bonds from Stanford in exchange, at 65. on replied that the Western Development Company would have to take about 50,000 in Southern Pacific bonds under such an arrangement to cover Stanford's obligations about Stanford's collaterals. He thought that Stanford had \$800,000 of United es bonds in that institution. Michael Reese's executors were calling for money. It not appear what conclusion was finally reached.

said that the general market had become so strong in the latter part of 1879 that it was a good time to sell anything.²⁰ On conclusion of the agreement a regular stock market campaign was opened with the usual accompaniment of matched sales to give an appearance of activity.²¹ The stock nevertheless steadily declined, and the option held by the syndicate to take a second block of shares was not exercised.

The day after the arrangement for the purchase of the Central Pacific stock was concluded, and partly because of its conclusion, Speyer and Company entered into a written contract with the Western Development Company, containing a variety of provisions which together show the factors upon which the value of Southern Pacific securities then depended in the eyes of eastern bankers. Under an agreement dated January 28, the Western Development Company agreed to sell to Speyer and Company \$1,000,000 in Southern Pacific bonds, within ten days, at 86. Within the year it undertook, in addition, to sell, if Speyer and Company should wish to buy, an additional \$4,000,000 in bonds, at 87.51, and a still further amount of \$5,000,000 at 90. On their part, the Western Development and Southern Pacific companies agreed not to sell any of the said bonds within a year to others than Speyer and Company, and the Central Pacific agreed not to issue bonds under the mortgage in question, to exceed \$40,000 per mile.

Terms of Contract with Bankers

The more important features of the agreement with Speyer and Company in 1878 were, however, the following, relating to the lease arrangements between the Central Pacific and the Southern Pacific. Under these provisions the Southern Pacific agreed to secure a new lease from the Central Pacific within three months, containing (1) a provision that the lease should

²⁰ Colton case, p. 112, deposition J. D. Probst.

²¹ Ibid., pp. 146-47, deposition A. L. Thompson.

five years from the 1st of May 1971. - - 1771 the lease should be extended to be in the mnected with the eastern graem : The area a to lel, within five years, mui and and and a second wided that the extension if the author to ; and (3) a provision that the Imma Turns al under the lease. sufficient a seer manual outhern Pacific ais: agreet with freeze att. my time before the angument it that war in the ie lease contemplated a mirat arms e mere mnect the railmand of the tarm of the total arm of n system of mais, and the lamb frame along should refree to prome the term to be the party of the first tart to the -tof one year from the that to the still to the e filled up one of the TV (gui) the limb (is and Human, and terveen Element in the late tit might chasee as sail 1 fouthern Patific finals maerie . . . - the third cart. within times is a sec-Teement, the witter that are ineer of the Southern Parity out ween Tres Fires and Fire - --o could be completed into a - - - onths of the time one ionstructed for the intipulation in the spread ---

Later Improvement

After 1880 financial conditions generally improved. T earnings of the Central Pacific-Southern Pacific roads we still subject to fluctuations, but for several years substant dividends were declared, and the sale of large quantities Central Pacific stock in Europe enabled the associates to redu their commitments. Moreover, by 1883 the long delayed e tension to The Needles was completed and the necessary out for new construction was greatly lessened. The year 1883 m be taken as the close of the construction period of the Hur ington system. Henceforth, in the absence of special disaste and subject to successful settlement of its indebtedness to t government, the solvency of the Central Pacific and Southe Pacific railroads may be said to have been assured. We m therefore at this point turn away from the more personal a financial aspects of the enterprise, to the consideration certain important political matters with which the associal were long concerned.

sis point o Cts from hich these to anger : Promoting st er the results on against pol Tined in previo was the passage la erected a State defined and prohi The commissione ons, but they were Ormation from the Sed with the duty of s erence to the security The commissioners appoint railroads in California, an Fused to render the reports t the commission was unable ears later the commissioners a single commissioner was der a statu istered b accun imilar in most Rice, bu edecessor ain star did hi

*

corporation led to important additions to the law. This sentment had been growing for several years. The Sacremento reporter for the San Francisco Bulletin wrote, in Mari 1868:

There is a strong prejudice existing here and daily growing stronger, against the Central Pacific Railroad Company. The members from Placer, Nevada, and El Dorado counties are all of them, I suppose, pledged to endeavor to obtain a reduction of the rates of freight and fare on the line. Petitions, apparently signed by nearly all the residents of the districts which use the road for the transportation of freight and travel, have poured in upon the legislature, asking a reduction of prices. It is said that traders who complain of the rates are discriminated against. A general feeling exists that, considering how liberally it has been dealt with by Congress and the State, the management of the business and affairs of the company is extremely illiberal . . .

In like vein the Stockton Independent said of the owner of the Central Pacific in 1871:

No set of men on the face of the globe were ever placed in a more enviable position, or in one where by the exercise of a reasonable foresight, they could have retained their popularity and the friendship of the people. It is now hardly two years since this work was completed, and how remarkable has been the change in public sentiment. Along the whole line of their main trunk road from San Francisco to Ogden, as well as along the various branch roads of this company, nothing is heard but one continuous murmur of complaint, and it is safe to assert that this shortsighted, illiberal, and suicidal policy of the company has so completely changed the sentiment of the people that there is not in a single town on any of their lines of road, either in this state or Nevada, one individual who approves of this course, nor one who will speak well of the company, unless it be one of their subsidized agenstrikers.

ginnings of State Regulation

It is not necessary to dwell at this point on the reasons for e opinions voiced in these extracts from the press. eling of the general public, of which these extracts are the . flection, was doubtless due in part to anger at the methods ployed by the Central Pacific in promoting subsidy legislan, in part to disappointment over the results of railroad struction, and in part to reaction against policies of the tral Pacific such as have been outlined in previous chapters. wever this may be, the result was the passage of the soed O'Connor bill in 1876, which erected a State Board of insportation Commissioners, and defined and prohibited exion and unjust discrimination. The commissioners were only to enforce these prohibitions, but they were given ensive authority to secure information from the steam roads of the state, and were charged with the duty of superng all such railroads with reference to the security and ommodation of the public.1

It appears from the report of the commissioners appointed ler the O'Connor Act that the railroads in California, and narticular the Central Pacific, refused to render the reports uired by the legislature, and that the commission was unable compel them to do so.² Two years later the commissioners re legislated out of office, and a single commissioner was cointed in their place, acting under a statute similar in most nortant respects to that administered by his predecessors.³ Tuttle, the new commissioner, accumulated certain statisticular during his two-year term of office, but otherwise did little which the railroads could object.

Laws of California, 1875-76, Ch. 515. For a readable account of the Railroad Commission up to 1895, see Moffet, The Railroad Commission up to 1895, see Moffet, The Railroad Commission up to 1895, see Moffet, The Railroad Commission up to 1895.

3 Report of the Board of Commissioners tof California, December, 1877.

1 Laws of California, 1877-78, Ch. 641.

The development of railroad regulation was thus tem arily arrested. Yet for several reasons the check to the p ress of public control was not lasting. Feeling in the state running high. The times were hard, both for reasons affec the whole country, and because of circumstances peculiar to Pacific Coast. The rainfall of the winter of 1876-77 slight and, as happens in such cases, great loss of cattle the ranges occurred, and the grain crop was seriously defici At the same time the yield of the Nevada silver mines decli -in fact the dividends of the important Consolidated Virg mine stopped altogether in January, 1877, to the great distr ance of the stock market at San Francisco. Under the conditions unemployment and suffering were the experie of the working classes, while riots and later, political agitat also resulted. Even the radical labor leader, Dennis Kears in spite of his lack of character and self-restraint, or even unusual mental ability, served as the temporary expression this time of a real distress, and had some influence on the cor of legislation.

Railroad Question in Constitutional Convention

So far as the railroads were concerned, the effect of unrest throughout California and the activity of the Worki man's party is seen in the railroad clauses of the Constitut of 1879, and of the Act of 1880, which carried them i effect. The call for a convention was issued by the same leglature which passed the railroad control bill of 1878.⁴ Colton thought the call most unfortunate,⁵ but there is reason to suppose that the legislature had anything particula radical in mind.

When the convention began its sessions, however, its me bership was found to include a majority of persons determine

⁴ Laws of California, 1877-78, Ch. 490.

⁵ Colton case, p. 7646, Colton to Huntington, May 23, 1878.

force thoroughgoing regulation upon the railroad system of ne state, as well as a minority opposed to government control f any kind. Just how regulation should be made effective, it true, few members of the first-named group knew. Some vere opposed to corporations as a class, and thought that at east unlimited liability should be imposed on holders of orporate stock. Others were in favor of declaring railroads public highways, upon which all persons should be allowed to un cars and locomotives under such regulations as might be rescribed by law. Still others desired to set a maximum limit of 10 per cent to the return on investment in railroad property. The extreme position on the other side was taken by men like McFarland, of Sacramento, who maintained that the clamor about railroads and corporations was a mania evolved from the inner consciousness of members of the convention, as spiders spin their webs.

The discussion of railroad regulation by the Constitutional Convention of 1879 began on November 18 and ended on December 7. It was systematically conducted, participated in by men with a wide variety of views, and resulted in constructive conclusions of importance. More could scarcely be asked of a deliberative assembly. The main decisions reached were as given below.

New Regulative Commission

The first conclusion of the Constitutional Convention was that the regulation of railroads in California should be entrusted to an elective commission, holding office for four years, and vested with the power to establish and publish rates, to examine the books and records of transportation companies, and to prescribe a uniform system of accounts. Heavy penalties, including fine and imprisonment, were provided for failure to obey the orders the commissioners might make.

The principal objection made to the establishment of a

commission was that its power would be excessive. It was pointed out that the commission would combine legislative, judicial, and executive functions, and that its members could lower rates and increase railroad expenses at will. Mr. Wilson, of San Francisco, declared:

Here, then, will stand in our government a constitutional triumvirate as great in many respects as that of Rome in the olden time. They may raise and lower the rates of freight and fare to suit their powers, and thus they can play with the value of the stock in the market, and determine the value of the bonds and mortgages on the road . . . They will be sole judges of what are abuses . . . They will determine complaints on their own notions of right and wrong, and however erroneous or malicious their acts, there will be no remedy or appeal.

Reference was made to the English Railway Commission of 1873 and to the Massachusetts Commission of 1869, and the Wisconsin experiment of 1874 was held up as something to avoid. The reply to this kind of objection was that the power to control rates must be lodged somewhere, and that the legislature was inexpert, slow to act, and subject to corrupt influences.

Other Constitutional Provisions

The second decision of the convention was that a general prohibition of discrimination should be placed in the fundamental law. The clauses finally adopted provided that no discrimination in charges or facilities for transportation should be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within the state, or coming from or going to any other state. In addition to this general prohibition, it was enacted that persons and property transported over any railroad, or by any other transportation company or individual, should be delivered at any station

t charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station. This amounted to a stringent prohibition of greater charges for shorter than for longer hauls. Speakers opposed to the discriminative clauses insisted that only unjust discrimination, not all discrimination, should be prohibited, and pointed out that the proposed law was unconstitutional in that it applied to commerce between the states. Neither objection was sufficient to persuade the convention that the proposals should not be approved.

Besides the fundamental clauses relating to a commission and those prohibiting and defining discrimination, the Constitutional Convention of 1879 forbade railroads to grant passes to persons holding any office of honor, trust, or profit in the state; forbade them also to agree to divide earnings with owners of vessels entering or leaving the state, or, under certain conditions, with other common carriers; granted to all milroads the right to connect with, intersect, or cross other railroads; and provided that no officer or employee of any railroad or canal company should be interested in the furnishing of material or supplies to such company. One apparently important clause declared that a railroad which should lower its rates of fare or freight for the purpose of competing with any other common carrier, should not again raise these rates without the consent of the governmental authority in which should be vested the power to regulate fares and freights.

Act of 1880

Special emphasis should be placed upon the constitutional provisions adopted in 1879 because they created the framework upon which railroad regulation in California was to hang for thirty years. For a full understanding of the system the act of the legislature approved April 15, 1880, should also be consulted. This act defined certain terms used in the law. It also

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fixed the salary of the commissioners at \$4,000 each, prova a mechanism for enforcement of the commissioners' on through the courts, placed the office of the board in the cir San Francisco, and required rates established by the corn sion to be posted in all offices, station houses, warehouses, landing offices to or from which the rates applied. Final granted to the commission, in general terms, all the neces means and the authority to adopt any suitable procedus make effective the powers conferred by the Constitution.⁶

Harvey S. Brown, attorney for the Stanford inter once said that the Constitution of the state of California conceived in communistic malice, was framed by unpar able ignorance, adopted in frenzied madness, and was value only as a beacon to other states and peoples to avoid principles and results.⁷

The document certainly compelled the associates to sider the best method of defence against a political attack w threatened to sterilize the monopoly control which they slowly establishing over the railroad system of the state. I their point of view the danger was like any other—one t met by skilful strategy, displayed in a new field, but resem in impelling motive and essential character their actio adjusting rates and in dominating the terminal situatio San Francisco Bay.

Personnel of First Commission

According to the Constitution, one railroad commission was to be elected from each of three districts into which state was to be divided. Elections were held in 1880,

⁶ Laws of California, 1880, Ch. 50. Under the view that a clause in the Const merely amounted to a mandate to the legislature, an enactment such as that of 18 obviously necessary. It should be said, however, that in later years this concept somewhat changed, and constitutional provisions have been held to be self-executing was not the case in 1879. (McMurray, "Some Tendencies in Constitution Making California Law Review, March, 1914.)

⁷ City and County of San Francisco v. L. Stanford, Charles Crocker, et al, argus the Circuit Court of the United States, 9th Circuit, District of California.

one, C. J. Beerstecher, and George B. Stoneman were d. Cone was a ranch owner, business man, and capita-Red Bluff, with an income of \$50,000 a year, and by worth perhaps \$200,000. He had been on friendly with Stanford before he became commissioner, and had most of the prominent railroad officials of the state for five years. By association and point of view he reprethe interests of large business in the state. Stoneman politician of the better type, later governor of the state, nocrat, and believed to be a defender of the public

e third member of the commission was C. J. Beerstecher, Francisco lawyer with a miscellaneous practice amountperhaps \$50 a month. Judge Lawler, of the Superior of San Francisco, who knew Beerstecher well, says came to San Francisco, with nothing but a gripsack, ilt up a small practice, mainly divorce suits, among the classes in the city. For some time Beerstecher used 's office, living in rooms in the same building, for which \$15 a month; Lawler befriended him, and a man named an advanced him money for electioneering expenses. In for this, apparently, Steinman was later made bailiff railroad commission. That is to say, Beerstecher was with no reputation to lose, and in circumstances in which od-will had value.

e would scarcely expect effective regulation of a comn composed of a wealthy farmer, a cheap lawyer, and a ho looked to a career in the public service. Nor was egulation in fact secured. Stoneman once told Judge n, of Texas, that when the California commissioners lected, he, Stoneman, was elected because it was underhat he represented the popular interests; another gentle-

Visalia Delta said of Stoneman, with unconscious humor: "France has her Italy her Garibaldi; America her Washington; Ireland her O'Connell; and the hiftornia her Stoneman."

man (J. S. Cone) was elected because it was understood that he represented the feeling of the corporations, and a third (Beerstecher) was a sand-lot man. He added that, having the sand-lot man with him to take care of the interests of the people, he thought he was all right, but in a short time the sand-lot man sold out and did not amount to anything. Cone also considered Beerstecher a reliable pro-railroad man. There is no direct evidence that Beerstecher accepted railroad money, but the probabilities are strong. Before discussing this point, however, the activities of the new commission may be briefly described.

Indifference of Commissioners

The evidence shows that from the very first the three members of the California commission devoted but a small portion of their time to the work of regulation. Mr. Beerstecher was accustomed to visit his office twice a day, spending perhaps an hour there each time. This was while Beerstecher was a resident of San Francisco. In the latter part of his term he lived in the Napa Valley and probably spent even less time on his official duties. Nor did Beerstecher compare unfavorably with his fellow appointees in application to his work. Governor Stoneman devoted five or six days a month to affairs of the commission; Mr. Cone about the same. Of 127 meetings held by the board between May 3, 1880, and January 8, 1883, Cone was present at 99, Stoneham at 80, and Beerstecher at 109.10

It seems beyond belief that a new commission, established to initiate public control of a great industry, should have approached the problem in this indifferent way. The undertaking called for the fullest exercise of the powers of all the com-

⁹ Arguments and statements before the Committee on Commerce, House of Representatives, 47th Congress, 1st Session, 1882, House Misc. Doc. 55, p. 262, Seriel No. 2047.
10 Report of the Committee on Corporations, 1883, testimony W. R. Andros, secretary to the commission (in appendix to journals of the Senate and Assembly of the Legislature of California, 25th Session, 1883).

THE STATE OF THE REAL PROPERTY OF THE PROPE THE THE PROPERTY WHEN THE PARTY OF THE The state of the s The state of the same desired the same production of the salary THE THE PROPERTY AND THE WAY STATE OF THE PARTY OF THE PA THE THE THE PROPERTY OF THE PARTY OF THE PAR The comment of the state of the THE ENGINEERING SINGS IN A STORY The second of th with the same to him and he had no authority to more a section while the the comments the that he did not as at and video ments that it was he beauted to go provide The state of the willow's company

See a see a see and to the assert of the As The second state of the second state of the second Times the original cause for the judget of the manager = = majors mortaned was lack at the set of the series and to educate public opinion as to its owner me meanwhile of all the authority which the To was gross negligence and indifference to be mi vie mmer rein in law stood unenforced

Ampure of First Rate Schedule

task eventually undertaken by the commission The The spring of the schedules for passengers in Traing the spring and summer of 1880, the comm are reled through the state taking testimony and he may In the winter and spring of 1880 81, they tompients formulate results. It appears that in May 130 Stone an introduced a resolution to the effect that maxim = Report of the Committee on Corporations, 1884, p. 48, testimon, t. 1, p. . . .

rates in California should not exceed five cents per ton per mile for distances 100 miles and over, and six cents per ton per mile for distances under 100 miles, and that maximum fares should not exceed four cents and five cents per mile within the same limitations. This was defeated by a vote of two to one. Nothing was done between this time and February, 1881, when the board unanimously adopted a schedule of passenger fares with maxima varying from five cents to three cents per mile. 12

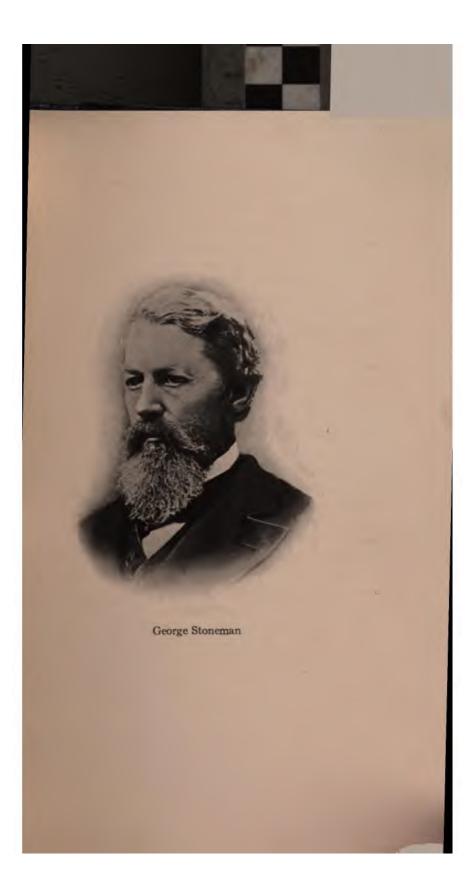
At the same time that the passenger schedule was introduced Mr. Cone submitted a freight tariff, which was also adopted. This schedule cut rates mainly on agricultural products originating in the northern part of the state. Stoneman objected to it—but later said that he did not prepare an alternative schedule because he knew it would not be adopted. He did, however, call the attention of the board to the fact that southern California was being discriminated against. Beerstecher had no part in the preparation of the new rates, but made no opposition to them.

Delay in Enforcement

Armed with the new passenger and freight schedules, Mr. Cone went over to the Southern Pacific offices and left the figures with Mr. Towne, general manager, for comment. The railroad people at once objected. They said they were building the Southern Pacific and selling bonds to raise the money. The proposed reductions would injure their credit and could not be accepted. Cone was anxious to avoid litigation and to get quick action.¹⁴ Moreover, Stanford wished to get away and go to Europe, and Cone did not like to keep him.

¹³ This schedule was prepared under the direction of Stoneman and was approved by Beerstecher on the understanding that the railroad companies were to be asked to show cause why it should not be adopted. (Report of the Committee on Corporations, 1883, testimony C. J. Beerstecher.)

¹³ Ibid., p. 11, testimony G. B. Stoneman. Mr. Cone says that the freight schedule was not fully prepared till March, 1881.
¹⁴ Ibid., testimony J. S. Cone.





s Cone said in another connection, Stanford was pretty winng in his ways. The result was that the railroad agreed not
contest the new freight rates and Cone consented not to
ress the reduction in passenger rates, at least not until October,
881. There is no evidence that Cone possessed authority from
the commission to negotiate with the Central Pacific, but he
teems to have acted in confidence that Beerstecher would suport him in action favorable to the railroad and Stoneman in
ction of contrary tenor.

As a matter of fact the board did not take further action regulation of passenger fares until August, 1882, a year nd a half after the question had first been raised. By this ime Cone had become convinced, so he says, that Stanford would concede no further reduction in railroad charges. On he 15th of August, Stoneman accordingly reintroduced his riginal passenger schedule, but slightly changed. The matter was laid over for a month, and in September, at a meeting at which only Cone and Stoneman were present, a substitute resolution was adopted, setting a maximum fare of four cents er mile. Stoneman thought the maximum should be three ents, but Cone would not consent. The new maxima were aspended in October "until further order of the board" in rder to give the railroad companies an opportunity to be heard. efore the commission came together again, however, Stonean had resigned. This left Beerstecher and Cone-with two a quorum. It is eloquent of Beerstecher's attitude that he tended no meeting of the board after November 22, 1882, d that on that day his action in respect to passenger rates as to move to postpone consideration.

In two years and seven months the only reductions in rates d fares secured by the Railroad Commission were certain cuts the rates on products of agriculture conceded to the farmer ember of the commission by his railroad friends. The commission formulated no principles and worked out no effective

procedure. Even its reports to the legislature had little The first two were prepared by Mr. Beerstecher, the th Mr. Tuttle, former railroad commissioner but no longer official way connected with regulation work. When the mission was not unanimous in its decisions, the dusually was that of Cone and Beerstecher against Sto—a fact which leads us back to the question of the of the influence which the Stanford group was a exert.

Bribery Committed

The charge is made that the Central Pacific bough paid for Beerstecher's services while a member of the Ra Commission, and that Cone was so influenced by his pe and business relations with the managers of the Central as to be unable to view their activities in the critical ar partial way which his position demanded. The evide the case is purely circumstantial, but seems to be convi So far as the former is concerned we have the admitte that Beerstecher was richer at the end of his term of offic at the beginning by at least \$12,000 and probably by a goo more. As he put it, he thought he saved his entire sal \$4,000 a year as commissioner, during these years. Beers asserted incidentally that his legal practice while a mem the Railroad Board amounted to from \$1,200 to \$1,500 -although the records of the Superior Court of San cisco, before which Beerstecher practiced, show that th highly unlikely,15 and the testimony of the baliff to the mission is directly to the contrary. \$12,000 ma regarded as adequate compensation for a man of Beerste type.16

¹⁵ Report of the Committee on Corporations, 1883, testimony C. J. Becratech 16 When Beerstecher came up for re-election in 1882, the opposition press that a railroad official handed every employee of the railroad in Becrstecher's Republican ticket with Beerstecher's name printed on it, with orders to vote it. Slough Delta, May 12, 1882.)

erke Transaction

Cone's case is not quite so simple. It seems unlikely that man of his standing should have consciously accepted a ribe. There is, however, direct evidence of a reliable charcter that Cone was given unusual consideration by the rail-oad in connection with the purchase of certain lands in the northern part of the state, and Cone himself admitted that while he was commissioner he had bought some lands from a man named Gerke and had resold them within two or three months to the treasurer of the Southern Pacific at a profit of \$100,000.17

What happened in the first of these two instances was this: It seems that there was a tract of about 34,000 acres of the Dregon grant of the Central Pacific lying east of Cone's ranch -rough, chapparal land, graded at from 50 cents to \$2.50 an cre. Cone was running about 20,000 sheep at the time, and as using the land without paying for it, as certain other indiiduals were also doing. Among these other persons was a an named Wilson, who was not only a small sheep owner, ut an actual settler as well. Wilson originally applied to urchase from 5,000 to 7,000 acres of the tract, and was quoted e first graded price, \$1.25 to \$2.50 an acre. At this quotation e took some land that had water on it, but in general could ot afford to buy. Later the land was regraded, and Redding, ne Central Pacific land agent, told Wilson that the regrade rice was 50 cents. A few months after, in June, 1881, Wilon applied to purchase, although he believed that the applicaion was unimportant, since as a settler he was entitled to econd grade. He had the land fenced by this time.

Meanwhile, on the 21st of April, 1880, Cone had negoiated with the Central Pacific for a tract of 34,097.45 acres, including the land in which Wilson was interested. He did not offer to purchase, but asked to have the lands that were free

¹⁷ Report of the Committee on Corporations, 1883, testimony J. S. Cone.

reserved for him, that he might ascertain the bounds of hi range. In fact, when the statement of the cost of the land was made out for him he refused to take them at the grader price, and abruptly left the Central Pacific land office, exhibiting considerable ill feeling. This was the situation when Wilson applied. Properly considered, Wilson seems to have been entitled to purchase at the new price. His application was subsequent to Cone's conference with the Central Pacific land commissioner, but Cone had then refused to pay the price asked, which left the lands open. The Central Pacific, however, through Mr. Redding, its agent, refused to sell. Mr. Redding later said:

When Mr. Wilson demanded a right to purchase a portion of these lands because Mr. Cone had bargained for them and then refused to take them, I told Mr. Wilson the circumstances and said to him that Mr. Cone had refused under so great an exhibition of temper that it was my duty to wait until Mr. Cone became more calm. I also added that the new Constitution and the people had given Mr. Cone and his associates powers that were more extensive than those of the Czar of Russia; that he and his associates could virtually confiscate the property of the stockholders of the railroad company, and that I could not afford to add to a quarrel which by any possibility might be construed into an excuse for unjust action.

The result was that Wilson hunted up Cone and tried to get a relinquishment. Cone offered to let Wilson have the land at the graded price—the first graded price, as Wilson understood it. This offer was naturally refused, and Cone subsequently bought the whole tract for \$29,199.67. Although the facts are somewhat complicated, it seems clear that Mr. Cone received special treatment, due to his position as railroad commissioner.

Of the Gerke transaction, Cone testified:

I would say that the ranch was held under a deed of trust, and parties were foreclosing it, and at the time I bought it it

would have been sold under a deed of trust in fourteen days, and the party came to me and asked what I would pay for it and I didn't dream they intended to sell it because I didn't know the condition the land was in, and they insisted on my making an offer that day for it. I made an offer and it was accepted.

Mr. Storke: What was your profit on that transaction?
A. I think in the neighborhood of one hundred thousand dollars, and the worst trade I ever made when I sold it.

Finding of Legislative Committee

Dealings of this kind were improper, to say the least, and calculated to interfere with the impartial discharge of a commissioner's duties. On the whole subject a committee of the California legislature reported as follows:

As to the second subject of inquiry, whether the Commissioners, or either of them, during their term of office, may have made any extraordinary acquisition of property . . . your committee report that in their opinion Commissioner Stoneman did not make any extraordinary acquisition of property; that Commissioner Cone made a large acquisition to his wealth, which was already great when he was elected Railroad Commissioner, and your committee believe that such acquisition of wealth was largely due to extraordinary and unusual facilities afforded by the railroad officers; and that Commissioner Cone, in the purchase of thirty-four thousand acres of land for twenty-nine thousand dollars, was made a privileged purchaser, and received from the railroad company facilities in this tegard denied to other applicants for portions of the tract; and further, that the transaction by which the Gerke farm was purchased by Commissioner Cone in April, 1881, and sold in September of the same year to Nicholas Smith, the Treasurer of the Southern Pacific Railroad Company, at a profit of one hundred thousand dollars, gives rise to the suspicion that more was contemplated in the purchase and sale than appears on the face of the transaction. As to Commissioner Beerstecher, your committee find that by general report, and in the opinion of his associates, he was without means at the time of his election,

and his sudden acquisition of wealth while Commissioner was without adequate explanation. . . .

As to the fourth subject of inquiry, your committee report that Commissioners Cone and Beerstecher knew of and permitted both systematic and casual discrimination in charges and facilities for transportation between persons and places by railroad corporations in this State, and that through their conduct in permitting and upholding the same, Commissioner Stoneman was unable to accomplish a redress of such discriminations while Commissioner. Further, under this fourth subject of inquiry, your committee find that Commissioner Cone sacrificed the best interests of the State through personal friendship for Governor Stanford, and in return therefor received favors from him; and that Commissioner Beerstecher's conduct admits of no other explanation than that he was bribed, and that in the opinion of this committee Commissioners Cone and Beerstecher acted in the interests of the railroad corporations rather than of the people.

This finding of the legislative committee is justified by the facts elicited in their investigation.

CHAPTER XII

THE SOUTHERN PACIFIC AND POLITICS

Appeals to Public

We may now consider in a more general fashion the political methods of the Southern Pacific group during the first thirty years of their railroad history. We have seen that they not only relied upon the talents of their legal staff in taking advantage of defects in the law, but that in two cases—the case of the railroad commission of 1880, and that of the subsidy in San Francisco in 1863—they probably resorted to the direct use of money to accomplish their ends. Yet a whole state cannot be bought, though individuals may be, and it would do injustice to the breadth of view of the associates to suppose that they limited themselves to any such crude device. Indeed, the frequency with which money bribes were offered probably diminished as time went on.

Consideration of the general policies of Mr. Stanford and of Mr. Huntington seems to show that they met the public demand for regulation of rates and fares in no less than five distinct ways.

The first method consisted of appeals to the general public at through testimony before legislative committees, communications to the newspapers, letters to private organizations which interested themselves in the government control of corporations, and other similar devices. By these various means Stanford, at least, spread his philosophy of industry widely abroad. He took the general position that agitation upon the subject of railroads was due to misapprehension of the facts. Most alleged abuses were imaginary, but the Central Pacific

stood ready to correct any that were shown to road fares and freights were cheaper in Califo where else in the world, all things considered.3 reduction were desired, the true policy was t burdens upon the railroads as possible, to encour new construction, and to rely on competition result. The interests of the railroad and of the same.8 Monopolies in the United States were the extent that they were beneficent. right of control in the state. The Granger Supreme Court of the United States were tion of the principles of free government wanted to exercise control over a railroad th state does when it exercises the right of emis is to say, they must pay to the individual ow of whatever was taken for public use. Anyt fiscation. Moreover, at best, regulation coul because it could not ever compel the shipper t all lines, and because, while commerce was w can governments could regulate but one lin California, regulation was peculiarly inexp the railway system of the state was incompl

¹ Letter to Senate Committee on Corporations, Californ 1874; San Francisco Chronicle, January 23, 1874.

² Testimony before Senate Committee on Corporations, Fe to journals of Senate and Assembly, 20th Session California Francisco Chronicle, February 17, 1874. Letter to Committee of the New York Chamber of Comm

⁴ The following interview with Charles Crocker, reported for March 3, 1883, suggests how the doctrine described in the t "A gentleman of Placerville called upon Mr. Charles Crocker. San Francisco last Saturday, to ascertain just what we might contend the extension of the radroad from Shingle Springs to Placer. Crocker conversed freely on the subject, and with an appearance emphatically that his company would not build or extend any conditions as to uncertainty of action by the Railroad Commiss of public opinion as manifested in the Legislature and portion says that if the Commission intends to make sweeping reduction action would make these roads valueless, and he is not dispose destroyed. In answer to a direct question with a full understi action would make these roads valueless, and he is not dispose destroyed. In answer to a direct question, with a full underst ported to our people, he said that if the Robinson suit were sett Commission ascertained as disposed to non-interference with pany was anxious to and would immediately extend the road

Huntington's Views

Mr. Huntington shared Mr. Stanford's views, or at least amoved the conclusion to which they led, but does not seem to he courted the same publicity in respect to the matter. Inteviews he distrusted. "I notice," he wrote in 1875, "that some correspondent of a San Diego paper has been interviewing Mr. Crocker. It is very difficult for any one to be interviewed by a infernal newspaper without getting hurt; and Mr. Crocker is not the most unlikely to get hurt of all the men I know."

Yet in spite of this attitude towards the newspaper reporter. Huntington had a keen appreciation of the importance of shapin public opinion, and was familiar with the ordinary devices med for the purpose, including the manipulation of the press. He was concerned over the attitude of the Sacramento Record Union. "If I owned the paper," he said, "I would control it or burn it." 5 "I wish you would have it sent over the wires s often as you can that the Southern Pacific is being rapidly built," he wrote Colton from New York in 1877.6 Again, "Yours of November 28 with Northern Pacific clips is recived. Many of the articles are very good. It is much better that all such articles with petitions be sent direct to members of the Senate and House, we keeping in the background as much as possible." 7

In November, 1875, Huntington wrote Colton that:

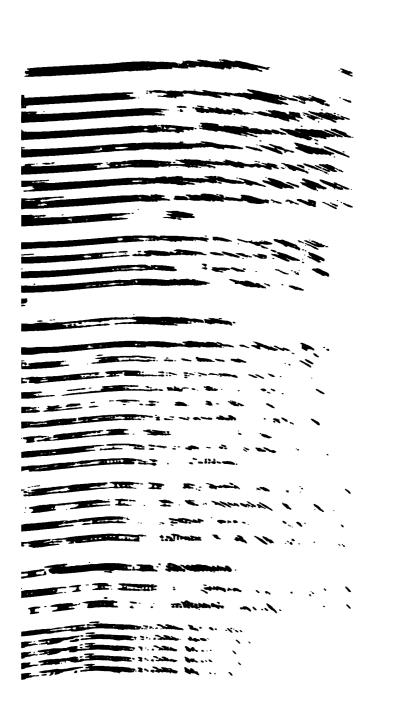
Gwynn left for the South yesterday. I think he can do us considerable good if he sticks for his hard money and anti-subsidy schemes; but if it was understood by the public that he was here in our interest, it would no doubt hurt us. When he left I told him he must not write to me, but when he wanted I should know his whereabouts, etc., to write to R. T. Colburn of Elizabeth, New Jersey.8

⁵ Colton case, pp. 1717-19, Huntington to Colton, April 27, 1876.

⁶ Ibid., p. 1754, Huntington to Colton, January 22, 1877.
7 Ibid., p. 1814, Huntington to Colton, December 7, 1875.

⁸ Ibid., pp. 1684-85, Huntington to Colton, November 13, 1875.

1 | 11 de 12 /te de 115 that Harrington W is to the a party of the my five couthern members 0 in California con the Couthern Pacific. H attind none but the best men-that is, men who would "g IE right as they understand it, and not as Tom Scott 12 o



Central Pacific was regularly represented at Washington and Sacramento when legislation was pending. Huntington, as has been said, took care of the company's affairs in Washington. He had offices in New York and Boston also, and divided his time between the three places while Congress was in session-four days in Washington, two in New York, and one in Boston. 18 Stanford attended to matters in Sacramento. either in person or through representatives such as William Carr or Stephen T. Gage. The latter was also for many years the company's agent in Nevada. Both Huntington and Stanford, of course, were assisted by a corps of lawyers and political aides-de-camp, some of whom were very highly paid. General Franchot, for instance, Huntington's chief assistant, received at one time a salary of \$20,000 a year, besides a liberal expense account. Much criticism has been directed at the activity of Central Pacific agents in the lobbies at Washington and Sacramento, but a large portion of it was probably legitimate.

Correspondence from Washington

Certainly the watch which the associates kept on legislation was very close. Huntington's own activities in 1875, 1876, 1877, and 1878 are vividly described in the letters which he wrote Colton during these years, and some few of these deserve to be reproduced if only for the picture they suggest of the man who wrote them. In March, 1875, Huntington wrote:

I notice a bill passed the House some few days since, called up by Williams of Michigan. I forget its title, but it called for reports, etc., etc., from the Pacific roads. Of course it was something ugly or it would not have passed.¹⁹

This was mere routine. By June, 1876, however, the legislative work had increased. Mr. Huntington told Colton:

¹⁸ Huntington manuscript, p. 17.

¹⁹ Colton case, pp. 1622-23, Huntington to Colton, March 3, 1875.

There is a terrible fight kept up on us in Washington. But while they may bite us, they will not eat us up. Sherrell telegraphed me to come to Washington in great haste, as Lawrence was to pass his bill at once; so I went over and got the committee to recall it from the House back to the committee, so the demagogue from Ohio cannot trouble us before the 6th of July. In the meantime we will be working on our land proposition in the Senate. Just what we can do I cannot say, but I shall surely keep trying.20

The following month he added:

I returned from Washington last night. Our matters look better there, but we are not out of danger. It has been so very hot here for the last few weeks that it has come near using me up. You know I do not spare myself when I have anything to do.21

In August, 1876, Huntington wrote Colton:

I have thought I could stand anything, but I am fearful this damnation Congress will kill me. Senator Edmunds told another Senator yesterday that he would pass his Pacific Railmad Sinking Fund Bill before Congress adjourned, but I think he will not, and I have some hope Congress will adjourn by the time this reaches you.22

And in March, 1877, he was able to say:

Congress has adjourned, and we have not been hurt, except by the paying out in Washington of some money for hotel bills,

I am quite sure that we stand better in Washington at this time than we ever did before.

The Pacific Mail Steamship Co. got no aid. I will tell you some things about that some time. The Sinking Fund Bill did not pass, but is in a much better shape to pass than it has ever been before. I stayed in Washington two days to fix up the Railroad Committee in the Senate. Scott was there, working

[&]quot; Colton case, p. 1728. Huntington to Colton. June 21, 1876.

[&]quot; lid., pp. 1731-32. Huntington to Colton. July 16, 1876.

[&]quot;Ill., p. 7660, Huntington to Colton, August 1, 1876.

for the same thing, but I beat him for once certain, as the committee is just what we want it, which is a very important thing for us. You will no doubt notice before you get this that we were not able to pass the Texas-Pacific bill.28

The committee with which Huntington was so content was changed somewhat later, much to his disgust.24

It was not until the first part of 1878, however, that his letters show him again hard at work. In January, 1878, Huntington wrote to Colton:

I notice what you write of the communists in the California Legislature, and am very sorry to know it, but the feeling in Congress is not much better, and yet, somehow, I do not think we shall be much hurt, although Scott is working hard and developing more strength than I supposed he had. He had the Railroad Committee of the House. I think we have it now.*

The following month he said:

I returned from Washington last night, and I am as near used up as I ever was in my life before. I am spending my last winter at Washington. As I feel today, I would not agree to spend another there for all the property we all have. Our matters are looking fair in Washington, Scott is very bitter in the discussion. He used some business compliments and all such stuff, and I am compelled to play him; but it is very distasteful to me.²⁶

This letter is followed in the record by a series of others of the same tenor, which will be presented without comment.

. . . I have done all I can to prevent certain bills from being reached, and do not think any bills can be that will hurt us, but if there are, they will pass, as this Congress is, I think, the worst set of men that have ever been collected together since man was created.27

²³Colton case, p. 1756, Huntington to Colton, March, 7, 1877.

²⁴ Ibid., p. 1758, Huntington to Colton, March 14, 1877; pp. 1812-13, Huntington & Colton, December 5, 1877.

 ²⁵ Ibid., pp. 7776-77, Huntington to Colton, January 11, 1878.
 26 Ibid., pp. 1847-48, Huntington to Colton, February 9, 1878

²⁷ Ibid., p. 1833, Huntington to Colton, New York, June 15, 1878.

I returned from Washington last night. I am almost happy to think I shall not be called there again this session, as Congress has adjourned its first session, and may the likes of it never meet again. I think in all the world's history never before was such a wild set of demagogues honored by the name of Congress. We have been hurt some, but some of the worst bills have been defeated, but we cannot stand many such congresses.²⁸

Friend Colton: I returned from Washington this morning and found on my desk yours of the 10th inst., No. 74. Thurman's funding bill has not passed the House yet, but it will, I think, although I am endeavoring to get it to the Judiciary Committee. If I can I think we can get it amended, but even that is doubtful. There were some mistakes made by us when the bill was in the Senate; the greatest was in Gould going to Washington; but it is too long a story to write now. I will tell you when we meet, if we have nothing better to talk of. This Congress is nothing but an agrarian camp, the worst body of men that ever before got together in this country. Scott is making a hard fight on his Texas and Pacific bill. He has made a combination with the Northern Pacific, which will give him some strength, how much I cannot tell. The Northern Pacific are to ask for guarantee of their bonds by the United States. I shall come to California soon after Congress adjourns. Find some one to buy me out of everything there. I am tired and want to quit.29

... I notice what you say of Thurman's Sinking Fund Bill—of course it is bad, but if we could have amended it so as to make it a finality, and give us 6 per cent on the fund, it would not have been so bad. It may not pass, but I think it will for this is the worst Congress we have ever had; if it should, we must beat it in the courts, if we can.

I go to Washington tonight; I should have gone last night, but for the reason that Clara has been quite sick for some days.

Mr. Sherrell telegraphed me yesterday that I must not fail of being there this morning. I cannot attend to this Washington business much longer.³⁰

^{*}Colton case, pp. 833-34. Huntington to Colton, Net

³⁹ Ibid., p. 1822, Huntington to Colton, New York, A
³⁸ Ibid., pp., 1823–24. Huntington to Colton, New Yo

I returned from Washington last night. I hope to get through there without being hurt any more; but it seems so though every committee in both Houses had something before them that we had an interest in.³¹

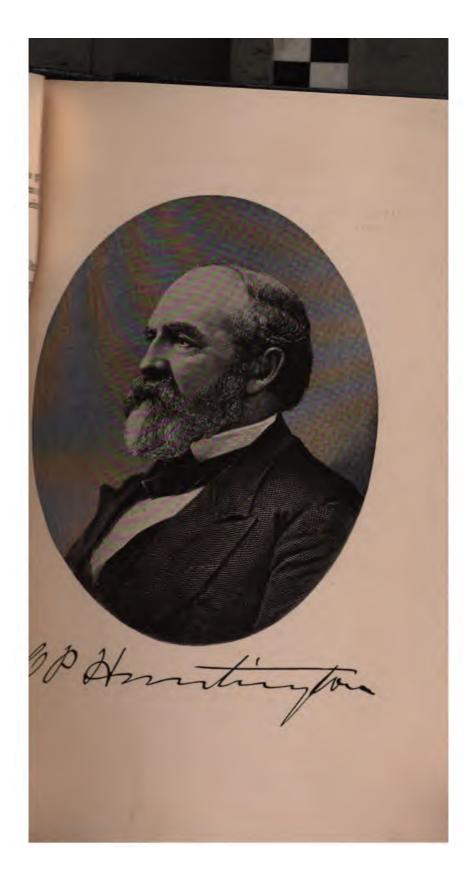
Skilled Wire-Pulling

There is no need to comment in any detail upon these letters. Their occasional indication of discouragement doubtless meant nothing more than that Huntington sometimes grew tired and hot and angry with the opposition which he encountered. A characteristic of the man was that he never really gave up. The Thurman bill referred to will be described in another connection.

Scott was a railroad man, at one time president of the Pennsylvania Railroad, who was seeking to persuade Congress to subsidize a transcontinental railway by the southern route. The land proposition was a scheme of the associates to induce the federal legislature to buy back a portion of the Central Pacific land grant at the government price. As a whole, the letters so far quoted show that Huntington was a persistent and energetic lobbyist, although the record of Congressional legislation shows that he was far from uniformly successful.

On the whole, the railroad managers pulled wires with a skill which rapidly increased with experience. Sometimes the company was made to appear prominently, and sometimes it was kept in the background when legislation was desired. Huntington found that some members of Congress were disinclined to talk to him concerning Southern Pacific matters. In such cases he had recourse to third parties—perhaps a constituent of the member in question, perhaps a friend. The same methods were employed in dealing with state legislation. In 1875 the Southern Pacific desired a franchise permitting it to build through Arizona. Huntington wrote Colton that he thought this would cost less if other interests than the asso-

³¹ Colton case, pp. 1828-29, Huntington to Colton, New York, May 24, 1878.



ciates stood at the front while the franchises were being obtained, but that after the charters were obtained it should be known that they were controlled by the Southern Pacific.⁸²
He said:

I am inclined to believe that if you could get the right man on that line in Arizona to work with the few papers they have there, to agitate the question in the territory, asking that some arrangement be made with the S. P., at the same time offer the S. P. a charter in the territory that would free the road from taxation, and one that would not allow for any interference with rates until ten per cent interest was declared on the common stock, I believe the Legislature could be called together by the people for \$5,000 and such a charter granted. Then we would take the chances of having such a charter made good by Congress or the State when it became one.83

At one time Huntington even suggested that the Southern Pacific might bear the expense of an extra session of the Arizona legislature in order to hasten consideration of legislation favorable to the company.³⁴ The desired legislation was eventually obtained, but not until February, 1887.

Unethical Dealings

Did or did not the Huntington group, including Stanford at Sacramento and Reno, and Huntington at Washington, employ improper means in their endeavor to influence votes? This is another question upon the answer to which much depends. That passes were issued to members of the legislature, members of Congress, and judges of courts, and that gentlemen of these types were entertained at dinner in Sacramento was generally known. We have Mr. Gage's statement, at least, that no more than this took place in Nevada. He told the United States Pacific Railway Commission of

²³ Colton case, pp. 1673-74. Huntington to Colton, October 9, 1875.

³³ Ibid., pp. 1679-81, Huntington to Colton, October 29, 1875.
³⁴ Ibid., pp. 1669-70, Huntington to Colton, September 27, 1875.

regret that I had, the imputations character, and which I feel I have a feel I may not live long enough to o that I have spent money in the Me Central Pacific like water; and those asserted, and I believe frequently be good people in the State, but they were to you yesterday. I have kept an acru penses for the first eight years that I w of the Mexada legislature, which includ during that time, and they figure up \$2, it, as it was. Now, if any one thinks the corrupt a legislature for eight years, expenses of myself, he must invoice a legislature at a very low price, and "but he in the price of the price of the price of the legislature at a very low price, and "but he in the price of the

Mr. Gage would not say, however, whether or not he had paid any money of advantage or reward to any memicalifornia or Nevada. Nor would in reply to the inquiries of the United Commission than that the company we settlement with the United States, your were made. 37

legislation than any strict system of ethics would allow. Huntington once stated his own position as follows:

If you have to pay money to have the right thing done, it is only just and fair to do it. . . . If a man has the power to do great evil and won't do right unless he is bribed to do it, I think the time spent will be gained when it is a man's duty to go up and bribe the judge. A man that will cry out against them himself will also do these things himself. If there was none for it, I would not hesitate.38

Further Evidence

More important than the record of such general expressions of opinion are the affidavits filed in the San Francisco subsidy litigation described in an earlier chapter. Nor is anyone likely to read the letters of Mr. Huntington to Mr. Colton in the late seventies without becoming convinced that the possibility of purchasing votes was constantly before Huntington's mind. Huntington wrote Colton at one time that the (Southem Pacific) company could not get legislation unless it paid more than it was worth. 89 In another communication he said: "If we pass the Sinking Fund Bill and beat Scott and the Union Pacific, it will hurt us not less than half flora"; 40 and in still another we find the cheery comment: "Matters do not look well in Washington, but I think we shall not be much hurt, although the boys are very hungry and it will cost considerably to be saved." 41

In November, 1877, Huntington wrote Colton:

You have no idea how I am annoyed by this Washington business, and I must and will give it up after this session. If we are not hurt this session it will be because we pay much

39 Colton Case, pp. 1802-3, Huntington to Colton. November 9, 1877.

³ Huntington manuscript, p. 80.

^{*} Ibid., pp. 1843-45, Huntington to Colton, January 28, 1878. J. M. Bassett declared at Huntington paid out \$1,700,000 to prevent Scott from securing a subsidy for the lantic and Pacific Railroad.

⁴¹ Ibid., p. 1840, Huntington to Colton, January 12, 1878.

such a shape that we can accept it, as will kill me yet if I have to continue year, and then every year the fight growsive; and rather than let it continue as it is, I would rather they take the roa

In one case where the salary to be was under consideration, Huntingto that it was important that the man's should be on the railroad's side, ar brought about a salary of \$10,000 to worth while. Huntington wanted the tion in writing, however, that he woul a fixed sum.43 When asked about t respondence, Huntington denied tha any vicious significance. He said he and even objected to the free use of 1 cifically, he gave instructions to his pe in any immoral or illegal sense. "Buy was bad policy," said he, and his pos ceived the formal support of Stanford entitled to less weight than Huntingto

Heavy General and Legal Expenses

POLITICS interference of the Fote to Huntington in 215 before the present inhis nomination and test command? Has and in acknowledg-Ommissioners before et least two members? missioner appointed ncisco's Police Comctatorial power over Nice? Were not the in San Francisco aford? How many which a citizen may nce that he will be ess there are such he recent elections of San Francisco? kland for the past ou not continuous - .51 accusations like first to remember y uncontradicted ce in California igns have been Not an

its adherents. It selects these from the from the party in the majority. Whet Republicans or Democrats, and hower tend on party issues, they move as one railroad against the people. To that first allegiance."

Bassett Polemic

This statement of Mr. Casserly charge or series of charges made by Bassett in the years following 1892. It the early pioneers. He came to Califorat various times miner, printer, new employee, and member of the Oakland time he was Leland Stanford's secretary had been forced out of the presidency of Bassett began to publish a series of of Huntington, and continued them week tervals, for several years. The sustained of this polemic, and the systematic Bassett reviewed and criticized the Hutthe series a noteworthy journalistic ach denounced Mr. Huntington for the or

gton's control. With respect to the interference of the outhern Pacific in politics, Bassett wrote to Huntington in 895:

What chief executive of the State, before the present incumbent, has there been who did not owe his nomination and election to the Southern Pacific Company and in acknowledgment of his debt hasten to obey its slightest command? Has there ever been a Board of Railroad Commissioners before last November in which you did not own at least two members? Have you not named every Harbor Commissioner appointed during the past twelve years?

Have you not hitherto chosen San Francisco's Police Commissions and do you not now exercise a dictatorial power over the city's police, especially the Harbor Police? Were not the Judges of the two United States Courts in San Francisco appointed at the instance of Leland Stanford? How many Superior Courts are there in the State in which a citizen may bring an action against you in full confidence that he will be fairly and impartially dealt with? Doubtless there are such but the difficulty is to find them. Before the recent elections how long did you control the government of San Francisco? Have you not dictated the government of Oakland for the past twenty-five years? Until last election had you not continuous control of Alameda County's government? . . . 51

When one desires to test the accuracy of accusations like hose of Casserly and of Bassett, one has first to remember hat they are in accord with the substantially uncontradicted eclarations of men of all degrees of prominence in California ver a period of fifty years. Political campaigns have been aged on the question of the railroad versus the people. Not ally newspapers like the Sacramento Union and the San

¹³ Most of the so-called "Dear Pard letters" from which the above is taken, appeared the San Francisco Daily Report after November, 1892. In the majority of cases the letters a printed in the Saturday edition. The correspondence continued with varying frequently until Bassett's death in 1993. It was credited with a considerable share in prevent-the refunding of the Central Pacific indebtedness to the United States government on a favorable to the corporation, and Bassett himself believed that his "exposures" had ously injured Southern Pacific credit in the financial markets.

Francisco Examiner, but men like John T. Doyle, at one time state railroad commissioner, General Howard, a leading member of the Constitutional Convention of 1879, and H. I Haight, at one time governor of the state of California, have asserted that railroad influence was a real and important factor in the politics of California. While neither a corporation not an individual can properly be convicted on the strength of current report, the presence of so much smoke, over so long a period, is fair evidence of some fire.

Documentary Evidence

Direct testimony relating to the political activity of the Huntington group comes from Mr. Huntington himself in two ways. In the first place there have been published certain letters which passed between Huntington and his associate, Mr. Colton, in the years 1875 to 1878. These documents have been referred to in other connections. They came out in the course of court proceedings, and have the weight of confidential communications, not intended for publication. Extracts from these letters will presently be given. Besides this, certain statements were given by Huntington to the press in 1890 which bear directly upon the point at issue. These statements were intended to discredit Stanford, but in the course of the heated controversy to which they gave rise they were not denied by Stanford nor withdrawn by their author.

On May 1, 1875, Huntington wrote Colton:

I noticed what you say of Piper; he is a wild hog; don't let him come back to Washington, but as the house is to be largely Democratic, and if he was to be defeated, likely it would be charged to us, hence, I should think it would be well to best him with a Democrat; but I would defeat him anyway, if he got the nomination put up another Democrat against him, and in that way elect a Republicar

⁵² Colton case, p. 1661, Huntington to Colton, May 1, 1871

sked to whom the letter referred, Huntington later said that the remembered the person, and he thought he did, he was a man whose views ran contrary to all human interests.⁵³

A letter in June, 1876, reads as follows:

I hope . . . will be sent back to Congress. I think it would be a misfortume if he was not. . . . has not always been right, but he is a good fellow and is growing every day. . . . is always right, and it would be a misfortune to Cal. not to have him in Congress. Piper is a damned hog, and should not come back. It is shame enough for a great commercial city like San Francisco to send a scavenger like him to Congress once. . . . 54

Again, in November, 1876, Huntington wrote Colton:

I hope . . . is elected and . . . defeated, as it was generally understood here that our hand was over one and under the other. . . . 55

A still later letter relates to the pending election of a senator from California. Huntington said:

We should be very careful to get a U. S. Senator from Cal. that will be disposed to use us fairly, and then have the power to help us . . ., I think, will be friendly, and there is no man in the Senate that can push a measure further than he can.⁵⁶

Controversy between Associates

The correspondence which has just been cited is not offered in order to discredit Mr. Huntington, or for any reason except to show that it was Huntington's belief in the years 1875, 1876, and 1877 that the influence of the Central Pacific should

United States Pacific Railway Commission, p. 3721, testimony C. P. Huntington.

¹⁴ Colton case, pp. 1726-27, Huntington to Colton, June 7, 1876. ¹⁵ Ibid., pp. 1740-41, Huntington to Colton, November 11, 1876.

Ibid., pp. 1740-41, Huntington to Colton, November 11, 1876.
 Ibid., pp. 1765-66, Huntington to Colton, April 3, 1877.

be used to advance the political interests of persons favinclined toward his railroad system and to discourage the opposition. The personal controversy which took between Stanford and Huntington in 1890 brought out additional evidence of the same sort. This dispute ostensibly because of the election of Stanford in 1883; senator from California in place of A. A. Sargent, Huntington's friends. In reality it was probably on final outcome of a growing tension between the two me to dissatisfaction on Huntington's part with the small a of time which Stanford devoted to railroad affair perhaps to jealousy of the prominence which Stanford e in public estimation.⁵⁷

However this may be, Stanford resigned the presice the Southern Pacific Company at the annual meeting stockholders on April 9, 1890, and Huntington was his place. In his address to the board of director company, Huntington used the following words:

Gentlemen, for the honor that you have done me in me President of the Southern Pacific Company . . . I you that I will be as true to the interest of the compage future as I have been in the past. I can promise you more, for at all times my personal interest has been that of the company. It shall be so in the future, and will I use this great corporation to advance my personal interest of the expense of its owners, or put my han treasury to defeat the people's choice, and thereby into positions that should be filled by others; but of my ability will I work for the interest of the sof the company and the people, whom it should see

If it has also been asserted that the failure of Mr. and Mrs. Stant the Huntington weddings was sharply resented by Mr. Huntington, time secretary to Mr. Stanford, says that the latter came to regard dividual of shady characteristics, and was not inclined to trust him throw Trinity Church up the side of Mt. Shasta. For his part, Hungford as a "blanked old tool." (San Francisco Dasly Report, July 22.

38 San Francisco Ecomism, April 10, 1850.

had little interest in general politics, thought they should it is probable enough that Stanford or some of his subonates had, on the other hand, used their influence as railrmen for personal and party ends

Unscrupulousness of Associates

One rises from the study of the political activities of owners of the Central Pacific with a feeling of indignat at the selfishness of these men, their indifference to all s considerations of private gain, and their readiness to use a and all methods which would advance their financial interes The associates met the proposal of government regulation a threat to rob them of their property and resisted it as the would have opposed any other attack. They never concer that any question of public interest was involved which it v necessary for them to respect. They frankly defended the of money as a method of persuading men to do what w right-which inevitably meant, of course, what in their ju ment was right. They fell out among themselves, not cause any one of them questioned the philosophy wh inspired their opposition to public control, but because one them was suspected of using power, developed in the cou of the defense of railroad interests, to advance personal ; bitions which ran counter to the views of his associa These things should be plainly stated and their force clear understood.

It is the writer's opinion, however, that the amount money spent by the Central Pacific in the purchase of legislar or other votes has probably been overestimated in the purmind. Direct bribery is a clumsy weapon and one difficult conceal if practiced on any considerable scale. It was probable unnecessary to a corporation such as the Central Pachwith other favors to bestow. Members of Congress mighindeed, be employed by the railroad when legislation was perfectly that the control of the control o

ing. Huntington maintained that this was legitimate, 61 and Gage once admitted that the company had to employ everybody who could pull a pound. The practice was more easily defensible than bribery, and could be applied to a better class of men. Other men might be reached through patronage, still others through discrimination in rates or through preferences. The suggestion that unfavorable legislation would hinder construction was potent with legislators from districts which still lacked rail connection. Yet Huntington once said of a man who was opposing him and whom he thought he could bribe, that his better judgment told him the associates could not afford to take the scamp into camp, 62 and this probably represented the ituation at most times. Whether this worked for the eventual advation of the Huntington group, is for the moralist to say.

⁴¹ United States Pacific Railway Commission, pp. 3697-98, testimony C. P. Huntington. 84 Colton case, p. 1729, Huntington to Colton, June 24, 1876.

I think very likely we could make out a through line. Very likely the Baltimore and Ohio would come in, and make up a line that would run to Omaha or Fort Kearney, passing through St. Louis and Chicago. But if this was done, very likely it would be difficult for us to control the steamship Company, and if we make up this line, leaving out the roads above mentioned, of course they would not expect any of the China business coming over our road, and then would they not be likely to work against us by allowing the Pacific Mail Steamship Company and any other companies to give bills of lading from China and Japan to Chicago, St. Louis, etc., over their roads, and to bring freight from those points to the sea coast here, to go by steamer and sail to California? . . . We cannot be too careful in starting this steamship line, for it is one of the things that if we go into, I have little doubt we shall hold it for years, and therefore the more reason why we should hold a majority of the stock of the company, as almost every road here is controlled by those that are always short or long of stock and endeavor to render everything bend to their particular wants. If short, they want to put the stock down, and if long they work for the reverse and we cannot afford to be in their power.10

Ownership of Shares

Doubtless for financial reasons the policy here laid down was departed from sufficiently to allow the Union Pacific a half-interest in the new company. For their part, Stanford, Huntington, Hopkins, Crocker and Colton subscribed each to 10,000 shares of the stock of the Occidental and Oriental Steamship Company. The account was charged to the Western Development Company and was held by that company as an asset. The remaining 50,000 shares were owned by the Union Pacific, and Mr. Gould shared with the associates the management of the enterprise. It may be added that the Occidental and Oriental owned no steamers, but chartered the "Oceanic," the "Belgic," and the "Gaelic." The "Oceanic" was a boat of

11 Ibid., pp. 466, 495-96, testimony F. S. Douty.

¹⁰ Colton case, pp. 981-83, Huntington to Colton, November 9, 1874.

coast line of California affords relatively few good harbors, but it is broken in the center by the splendid bay of San Francisco, and in the south by the less commodious but still adequate ports of San Pedro and San Diego. Between these termini a considerable commerce has long been carried on.

Still more important than the coastwise trade, however, has always been the deep sea commerce of San Francisco, and to a less extent that of the other ports. San Francisco is a locus for ocean lines connecting the Pacific Coast of the United States with the Atlantic seaboard, with Europe, with South America, and with the Orient. Likewise from San Francisco steamers ply up the Sacramento and San Joaquin rivers, carrying traffic well into the interior of the state. A mere mention of these facilities is sufficient to suggest the part which water transportation has played in the commercial and industrial life of the Far West.

River Traffic

The local river traffic which helps to distribute the cargoes brought by ocean boats to San Francisco attained some importance as early as 1847. In that year a small side-wheel steamer seems to have plied between San Francisco and Sacramento. In 1849 and 1850 larger boats were put on, the Sacramento was navigated to Colusa, and steamers ascended the San Joaquin to 150 miles above Stockton. In 1856 two steamers usually left San Francisco for Sacramento each afternoon at 4 P.M., arriving between 12 and 3 A.M. of the following morning. Corresponding boats left Sacramento at 2 P.M., arriving between 9 and 11 P.M. Often as many as four boats left San Francisco loaded in one day.¹

The total tonnage of steam vessels plying on California rivers and bays was estimated by the State Transportation

[‡]Report of the chief engineer upon the preliminary survey, revenue, and cost of construction of the San Francisco and Sacramento Railroad, 1856.

not amount to \$50 per ton, the railroad agreed to make up the difference, so that the receipts on the first 14,700 tons should always amount to \$735,000. If, on the other hand, the steamship should collect thereon an average rate exceeding \$50, the railroad was to be entitled to the surplus.

In the event that through westbound freight exceeded in volume 14,700 tons, the gross earnings on the excess quantity were to be divided between steamship company and railroad company as follows: first, \$30 per ton was to be taken by the steamship company; additional receipts up to \$50 a ton were to be divided equally between steamship and railroad; and earnings over \$50 were to go to the railroad.¹⁴

The essential facts in this agreement were that the steamship company surrendered the power of fixing the westbound rates in return for a guarantee of \$735,000 a year.

Later Contracts

This feature was also characteristic of later agreements between the same parties, different as the details of the subsequent arrangements sometimes were. In 1879 the Union Pacific, Central Pacific, and Pacific Mail companies agreed that the last-named should set aside space for 600 tons of railroad freight in each of its steamers moving monthly between New York and San Francisco. The railroads were to exercise full authority over the through rates of the steamship company, and for their part were to guarantee that the earnings on the railroad freight shipped were not to be less than \$48,000 monthly westbound, and \$35,000 monthly eastbound. In case the earnings on the 600 tons or less of railroad freight which might be sent in each vessel exceeded the guaranteed minimum, the balance of freight money was to be paid over to the railroad, while the moneys received on all freight between New York and San Francisco and between San Francisco and New York

¹⁴ United States v. Union Pacific Railroad, pp. 3316-20.

ships on the route around Cape Horn. These swift sailing vessels supplied the gold miners with the tools and manufactured goods necessary for their enterprises, and took back such commodities as California was able to export. Oil, soap, cement, coal, iron, nails, paper, glass, tobacco, liquors, dry goods, and the like moved west—hides, wool, canned fruits, salmon, sugar, wine, and grain went east. The business was for the most part handled by ships chartered for single voyages, not by lines of ships operating on regular schedules.⁵

As early as October, 1848, however, at least one regular line, the Pacific Mail Steamship Company, entered the field. The establishment of the Pacific Mail service was made possible by the grant of a government contract for the carriage of mails—its profits during the early years were largely derived from business arising out of the gold discoveries in California. The business of the Pacific Mail grew rapidly. In 1851 it operated eleven steamers varying in size from 600 to 1,300 tons, and had a capital stock of \$2,000,000. Thirty years later it operated fourteen ships, large and small, reported gross earnings of \$3,762,083 (1882) and had \$20,000,000 in stock outstanding. At first the Pacific Mail operated steamships between Panama and San Francisco. Later it extended its service to Astoria; and still later it established a line across

Products	Annual Receipts	Annual Export
Wheat	225,000 tons	200,000 tons
Barley	30,000 "	10,000 "
Dats	15,000 "	2,500 "
om.	5,000 "	1,000 "
lay	40,000 "	1,000 "
otatoes	37.500 "	10,000 "
eans	3,600 "	1,000 "
lope and broom corn	3,600 "	1,000 "
eets, carrots, tomatoes, parsnips, peas, cabbages,		
melons, squashes, etc	40,000 "	500 "
utter and cheese	10,000 "	500 "
randy and wine	6,000,000 gals.	4,000,000 gals.
uits, dried and fresh	20,000 tons	500 tons
ef, mutton, and pork	6,000 "	
mitry and eggs	12,000 "	
ool	7.500 "	4,000 "
des	168,000	one-half

1886, the Union Pacific paid \$34,652.94, the Central \$31,927.57, the Southern Pacific \$30,172.79, the Sat \$15,086.11, the Galveston, Harrisburg and San A \$11,536.82, and seven other companies smaller sums. 17

Change in Ocean Traffic

The change which took place in the volume of water commerce in and out of San Francisco coincident wi arrangements between the railroads and the Pacific Mail have been described, is clearly indicated in the foll table: 18

VALUE OF COMMODITIES SHIPPED FROM NEW YORK TO FRANCISCO AND FROM SAN FRANCISCO TO NEW YOU VIA PANAMA EACH YEAR FROM 1869 TO 1884

	Shipped from New	Shipped from San	
Year ended	York to San Fran-	Francisco to New	
June 30	cisco	York	
1869	\$50,015,994	\$20,186,035	\$70
1870	15,334,945	3,259,310	12
1871	9,391,607	2,161,106	1
1872	6,739,563	3,086,874	4
1873	3,042,617	3,667,107	4
1874	7,049,821	1,752,653	1
1875	6,057,202	2,382,928	
1876	4,470,594	1,983,261	4
1877	3,398,864	2,205,979	
1878	3,976,358	3,211,245	
1879	2,781,065	2,166,690	
1880	2,963,065	2,865,237	
1881	815,893	2,598,868	
1882	1,270,900	3,153,902	
1883	1,192,912	2,394,430	
1884	1,040,495	1,264,682	-

If we compare the year 1869—probably the last in the Pacific Mail and the Huntington interests were in

¹⁷ United States Pacific Railway Commission, pp. 4276-77.
¹⁸ Report on the internal commerce of the United States, by Joseph Nimmo, of the Bureau of Statistics, Treasury Department, 1884, Serial No. 2295.

ompetition—with the year 1884, it appears that the value of commodities shipped in and out of San Francisco via Panama uring these years declined from about seventy to about two sillion dollars. Doubtless this falling off was not all due to greements between rail and water carriers. For instance the adden decline between 1869 and 1870 was occasioned in large art by the sudden diversion of bullion shipments from the rater routes when the rail lines were opened, while passengers lso rapidly deserted the water for the more speedy and comortable rail service. Moreover, at a slightly later date the pecial contract system played its part in limiting shipments by sea. Yet it is not unfair to credit the arrangements between the Huntington group and the Pacific Mail with a considerable share of the reduction in water tonnage so desirable from the point of view of the land carriers.

Pacific Mail and Panama Railroad

The difficulty in bringing about a substantial lessening of competition by agreement with a water carrier is found in the fact that the sea is free, so that new ships and new shipping companies can readily take the place of those that are withdrawn. The peculiar strength of the Pacific Mail in negotiating with the railroad company lay in the fact that it enjoyed for many years the exclusive privilege of through-billing freight between San Francisco and New York, including the privilege of quoting a through rate. From all other steamship companies the Panama Railroad exacted a local rate for hauling freight across the Isthmus.¹⁹ Inasmuch as this local rate was very high, it was impossible for a competing steamship company to handle through business at a profit. It was thus the railroad which determined whether competition by way of the Isthmus of Panama should succeed or fail. It may be

^{**} Exception should be made of the period between December 16, 1900, and June 11, 902, when there was no agreement between the Pacific Mail and the Panama Railroad. United States v. Union Pacific, p. 2911, testimony Conner.)

poration under the direction of De Lesseps, purchased Panama Railroad for \$20,000,000; but this does not seen have affected the relations between the last-named railroad the Pacific Mail.

CHAPTER XIV

'ATE SYSTEM OF THE CENTRAL PACIFIC

Country in California

more than forty years the Southern Pacific interests vith varying success to modify the intensity of water ion by agreement with or by purchase of competing turing all this period the existence of alternative water as probably the principal influence determining the religustment of rates between different towns upon the Coast. In deciding upon the rates which they should the Southern Pacific interests had other factors to , however, besides the presence of water competition—which can be understood only after a careful study of aditions in the Far West.

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CHAPTER XIV

THE RATE SYSTEM OF THE CENTRAL PACIFIC

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The state of California is characteristically a country of reat distances, occupied by a relatively sparse and unequally listributed population. Its industry is primarily agricultural and mining. Although some manufactures have developed since 1870, such as foundries, woolen and sugar mills, glass, paper, cordage, powder, tobacco, tin, and hardware manufacturing concerns, yet even today the absence of adequate supplies of good coal, the smallness of the local market, and the distance from the great centers of population in the East hold manufactures within narrow limits. As explained in the previous hapter, the state is best fitted to produce and export products of the soil, and raw materials such as grain, fruit, wool, hides, and later wines, lumber, and oil. To this list should also be dded salmon.

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In later years the charges of the Southern Pacific naturally declined. Yet the rate on brick from San Francisco to Soledad in 1892 was 5½ cents per ton per mile on a haul of 143 miles, and that to San Miguel, 64 miles farther on, was almost 5 cents per ton per mile. The average receipts per ton per mile upon the Southern Pacific system were 2.04 cents per ton per mile for all freight as late as 1885, in spite of the large quantity of long distance through traffic. Plainly the average receipts on local business were much greater. There seems little doubt but that the local rates in California were always distinctly higher than in the eastern states, although they have been lowered in recent years. The reason was in the main the relatively slight density of traffic upon all except the trunk routes, as well as the higher cost of coal, and the successful control of competition to which the Southern Pacific attained.

Rate Discrimination

Turning now from the absolute level of local rates to the question of the relations which those rates bore to each other, we come to the question of discrimination in California. Railroad discrimination may be personal, in which case it involves the quoting of different rates to different persons for the same or a similar service, or it may be local, as in instances where the interests of competing localities are concerned. Either kind of discrimination is of profound social importance, for, after all, it must be remembered that the significant question for the producing and distributing interests of a state is not how much they pay for transportation, but whether this amount, be it much or little, is less than is paid by their competitors. The remainder of the present chapter will be devoted to the discussion of personal discrimination; in the next chapter the topic of local discrimination will be considered.

Statement of J. S. Leeds, submitted to the State Railroad Commission (Son Francisco Bulletin, April a. 1802).

was that of granting passes. Mr. Stubb were commonly issued in cases where shi tral Pacific and represented that they we tion by the company's competitors over some time were our patrons," said Mr. Stuble and I may say that wherever we were soment was true, we generally met the case

Sudden Tariff Changes

In addition to granting passes, the criminated by changing open rates sudde persons fortunate enough to be advised it ford once explained that individual items iff were changed whenever by so doing encourage business in any direction. 10 scarcely be in force ten days before the would be apparent. 11

How this might work was shown in was made of discrimination in favor of t pany. It was then alleged that the Centing oil rates from \$1.25 per hundred p cents, when the Standard Oil desired to

A letter to the vice-president of the Standard Oil Company, bearing upon an episode of this sort, written under date of December 4, 1888, got into the public press, and seems to establish the fact that transactions of this nature were going on. The letter follows and is self-explanatory.¹²

SAN FRANCISCO, December 4, 1888

W. H. Tilford, Vice-President, Standard Oil Company, 26 Broadway, New York

DEAR SIR:

I herewith hand you copy of a letter I have just received from Mr. Sproule, Assistant General Freight Agent of the Southern Pacific Company, this city. This letter I interpret to mean the 90-cent rate is for us to stock up from time to time, and that the \$1.25 rate will be in effect whenever we may desire. This \$1.25 rate is what Mr. Sproule refers to in the latter portion of his letter, as my offer of 90 cents to Mr. Stubbs was on condition that he has the rate of \$1.25 put into effect when we might ask him. This letter also reads as if the 90-cent rate and the \$1 rate was to be put in effect, January 1st. No doubt Mr. Stubbs was unaware that we were stocked up at the present rate of $82\frac{1}{2}$.

The Transcontinental Association adjourned at Chicago yesterday, and I understand that Mr. Stubbs is now on his way home. I will see him on his arrival here, and if Chairman Leeds of the Transcontinental Association has been notified to put the 90-cent rate in effect January 1st I will have the same corrected by wire and the \$1.25 rate put in. As soon as Mr. Stubbs reaches home I will telegraph you whether it is intended that the 90-cent rate should be put in effect January 1st or the \$1.25.

Yours truly,

E. A. TILFORD

Relations with Standard Oil

The fact that relations between the Southern Pacific and the Standard Oil Company were very close during the late

¹³San Francisco Examiner, December 30, 1892. October 29, 1894; San Francisco Bulletin, January 31, 1893.

ment of that company. Speaking before the Interstate Commerce Commission of the period about 1887, Mr. Luce said:

Just prior to that time I had in mind, there had been a very severe war in rates. I do not know whether that was the reason for the creation of this Commission or not, but the struggle had been very disastrous; two or three lines, I think, were very much crippled, going into the hands of receivers; and just before the act was passed, effective in April, 1887, I think, the lines got together and said, "Here, let us stop this foolishness; let us have some standard of rates and see what we can do on that basis. I believe the rates were made 50 per cent of the old tariff rate that had been used for two or three years. I presume the carriers thought that it would not be judicious to put their rates right up to standard 100 per cent, so they decided on a 50 per cent tariff.

THE CHAIRMAN. You mean 50 per cent more than the published rate, or 50 per cent of the published rate?

Mr. Luce. Of the published rate . . .

THE CHAIRMAN. That means your published rates, which your line had published up to that time in the eighties, were probably about twice that much?

Mr. Luce. Yes, sir.

THE CHAIRMAN. And yet that was an effort to bring together a stability of rates, and to get more out of the traffic than you had been getting during this war, I suppose?

MR. LUCE. Yes, sir.

THE CHAIRMAN. So that, as a matter of fact, prior to that, you had not been getting even as much as . . . the 50 per cent basis?

Mr. Luce. No, sir.

THE CHAIRMAN. It was a general departure from the socalled published rates of more than 50 per cent?

Mr. Luce. Oh, yes.16

Concrete Instances

The practice of quoting a lower rate to one person than to another in order to secure a specific shipment, or in considera-

¹⁵ Railroad Commission of Nevada v. Southern Pacific Company, 21, I. C. C. R. 329, 349 (1911).

first-class on the North Pacific Coast (in glass, packed, owner's risk); and double first-class on the San Francisco and North Pacific (in glass or demijohns, owner's risk). Window glass took first-class on the Central Pacific, one and one-half times first-class on the California Pacific, and fourth-class on the Southern Pacific if not over three feet long. Boiler flues moved first-class on the Central Pacific, third-class on the North Pacific Coast, and fourth- or fifth-class according as made of copper or brass, or of iron, on the Southern Pacific.³

Generally speaking, however, the classifications were much less elaborate than they later became. A committee of the California Senate observed in 1893 that the theory of the local classification of the Southern Pacific was to simplify so far as possible. Hence that classification started out with the announcement, in effect, that all articles not named specifically therein would be charged for at merchandise rates. It then continued to indicate the exceptions, enumerating articles that were light, bulky, of excessive value, liable to damage, etc., proceeding in this way along the same lines as the Western classification.⁴

When the Santa Fé later built into southern California it brought in the Western classification, tariffs, rules, and conditions that governed its lines elsewhere, and applied the Southern Pacific schedules of merchandise rates to this classification. Since, however, the Southern Pacific had only one merchandise class, the Santa Fé applied the same rates to each of the first four classes of the Western classification in California. The result of this adjustment of tariff to the Western classification was to produce practically the same revenue as would have resulted from the local classification and merchandise rates of the Southern Pacific Company. In 1893 the Southern

Report of California Commissioners of Transportation, 1877, table 1, pp. 34-38.

Report of the Senate Committee on Constitutional Amendments, relative to constitutional amendment No. 8, abrogating provisions of constitution as to railroad commission (in appendix to journals of the Senate and Assembly of the Legislature of the State of California, 30th Session, Vol. 8, 1893.)

poration under the direction of De Lesseps, purchased Panama Railroad for \$20,000,000; but this does not seen have affected the relations between the last-named railroad the Pacific Mail.

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the Southern and Central Pacific railroads, like other companies in the United States and Europe, varied their local charges with the distance between point of origin and point of

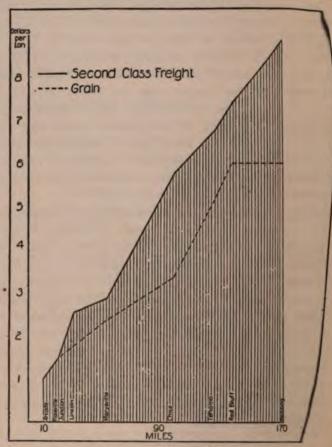


Chart showing rates on second-class freight and on grain in the Sacramento Valley, 1876.

destination. To illustrate this point briefly, two charts ar chere presented.

The first chart depicts the rates on second-class far eight

ame. We would average the rate while he was using the three outes.

Still later the railroads returned to the one-rate policy. To the at this rate they adopted a plan of "harmonization"; averaged the rates upon various commodities which had a charged to various shippers and made a new schedule of a from which they varied as emergency might require or addency advise, by the current method of rebating.¹⁹

ministration of Contracts

The railroad company reserved from the beginning the of way-billing the goods and collecting freights accordto the printed rates, agreeing to return the difference on entation of vouchers to the general freight agent of the tral Pacific at San Francisco after the lapse of a reasonable for auditing and adjusting the bills. The carrier also als insisted on the privilege of examining the shipper's books ase it suspected a violation of the agreement. In some pects, the wording and administration of the contracts bemore stringent in the later years. J. T. Doyle, a well-inmed San Francisco attorney, asserts that at the beginning Ethants were merely forbidden to import goods otherwise m by rail. Following this the prohibition was extended to handling or buying of goods imported by sea by other ties. Finally the boycott reached to the offending importers emselves, and firms signing the contracts were bound not sell or deliver goods to anyone who was in the habit of porting otherwise than by rail.20

Probably there was some difference in the treatment of the shippers in these matters. Mr. Hawley, a large import of hardware, told a committee of the California legisla-

a of Nevada v. Southern Pacific Company, 21 I. C. C. R. 329,

'le and printed in the Nation, December 8, 1881.

of the United States. The nature of somewhat changed since the early day with the Orient and with the west coast developed, and a large part of the freigh Coast now comes in by rail. This has of distributing points, and has to som interior of the state. The character of ever, changed and they remain as bef suming rather than producing centers.

Conflict of Interest

It follows from this division of la country on the Pacific Coast, and from cities in the distribution of finished divergencies in point of view have arisen ual cities, and also between the city coand the farming and manufacturing These differences have received free exsion of railroad rates. Inasmuch as the the towns are in large part imported goo have demanded low westbound carloa sources of supply. The larger centers of have opposed low rates on small consi

introduced by the company at the commencement of its history,

A second characteristic of railway traffic which had a profound effect upon early railroad tariffs was the relative density of business. Mr. Stanford advanced the theory that the railroad should strive to secure a certain average earning per car; and in sections where business was light, as well as upon commodities which were bulky in proportion to their weight, a high average rate per hundred pounds was accordingly charged.

Relative grades and relative density of traffic were not the only conditions relating to cost which influenced the varying level of transportation rates in California, but, apart from distance, they were perhaps the most important, and in any case they may be taken as illustrative of the group of circumstances to which they belong. In addition to the whole class of facts relating to cost, however, the Southern Pacific gave heed to matters of value of service in the fixing of its rates. Nothing will be said here of the principles of classification of freight, principles which have to do in part with the value of the service rendered; nor of individual differences between shippers, which have been alluded to in the preceding chapter in the discussion of personal discrimination. The effect of competition in distorting distance schedules in California will, however, be dealt with at some length.

Water Competition

It has already been pointed out that the presence or absence of water competition has always been a most important factor in determining the relative adjustment of local rates in the state of California. This competition has been extremely pervasive. Although the scarcity of good harbors and the location of the Coast Range of mountains hinders access from the sea into the interior of California, yet, on the other hand, the ports of San

water routes included San Francisco River and sloughs, Suisun Bay, River, Feather River, the Pacific Octhe Colorado River. In addition, eighty-two points where rates were the competitive points previously methings, the extent of the water computings, the extent of the water computation to warp almost beyond reconscale of tariffs which a railroad competition would naturally apply.

Low Rates to Competitive Points

An illustration of the effect of rates is found in the fact that the r Francisco to Sacramento by rail in 1 Woodland was \$4.25.5 The San From 1879 that, according to a recently movement charge for grain, potate from Lathrop to Mojave was exactly Newhall, or Los Angeles. The first miles, making the movement mileage named distance was 337 miles and

e to Los Angeles was 388 miles, or. The truth of the statement of the 7 data published by the State Comion in 1877, which show the striking 77 between non-competitive rates in rates to points which enjoyed the the water routes.

rates to Sacramento and to Los early as 1877. Yet this was only a ent on and the number of towns in practice of recognizing the force of extended. Moreover, the Southern wer instead of merely equal rates to a enjoyed the advantage of nearness e the ability to make use of a compettunities similar to those afforded by te, low rates were also extended to one railroad line. All this greatly n in the state, gave rise to numers difficult the task of concise

neral correctness of the com-

less for the lower classes. These rates

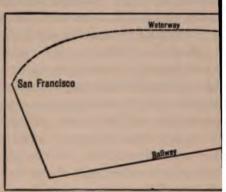


Diagram showing adjustment of freight rate and Stockton, 1916.

trolled by the class rate of the Pacific pany, which quoted a through first-c including wharfage and handling, betw Los Angeles via San Pedro. On all-r valley, as well as on shipments over the ever, water competition was not effective. Francisco to Simi, 429 miles from San

ngeles over the coast and San Joaquin Valley routes, spectively.

A condition similar to that at Los Angeles and at points the San Joaquin Valley was developed in connection with ipments from San Francisco to Stockton. The diagram on ge 266 will show the relative position of these two towns as ell as that of an intermediate place named Banta.

The distance between San Francisco and Stockton was 91 iles, and the first-class rate was 10 cents per hundred pounds. his rate was identical with the rate charged by boat lines berating on San Francisco Bay, and on the Sacramento and an Joaquin rivers. But although these boats touched at some termediate points, their competition was not everywhere fective; so that the first-class rate from San Francisco to anta, 74 miles, could be and was 17 cents, although freight rom San Francisco passed through Banta on its way to tockton.

ther Instances

Still another illustration of the influence of water competition upon local rates in California may be drawn from the erritory immediately north of San Francisco Bay. The towns avolved in this adjustment were San Francisco, Sebastopol, and Santa Rosa, as shown in the diagram on page 268. The rest-class rate from San Francisco to Sebastopol on the North-restern Pacific was 23 cents. This rate was shown to be mitted by the competition of a rail and water line, including a teamship haul from San Francisco to Petaluma and a haul wer an electric railway from Petaluma to Sebastopol. The istance from San Francisco to Sebastopol over the North-restern Pacific was 58.5 miles. The distances from San rancisco to the towns of Kenilworth and Santa Rosa, on the me railroad, were 45.7 and 52.5 miles, respectively. Shipents to Sebastopol passed through these places, but because

neither enjoyed the advantage of an alternative rout class rate to Santa Rosa was 25 cents and that to 28 cents—materially more than was charged for haul to Sebastopol.

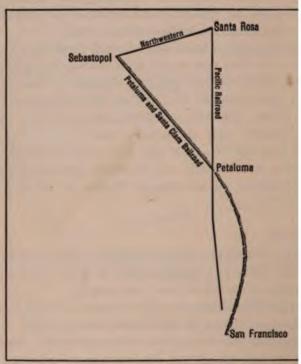
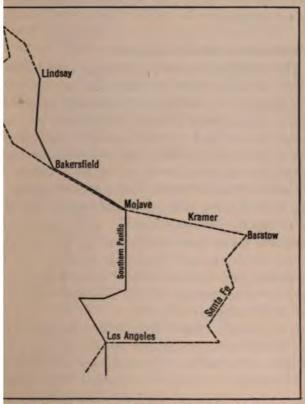


Diagram showing adjustment of freight rates between San l Santa Rosa, and Sebastopol, 1916.

While instances of the extreme discrimination of charge for a shorter than for a longer haul were 1916 to be usually the result of water competition, it been suggested that not all cases of discrimination v sort. A particularly striking case of unequal rarial competition alone was brought out in the same

h the preceding illustrations have been drawn, by the of the Atchison, Topeka and Santa Fé Railway lower rates from Los Angeles to Mojave, Cali-



showing adjustment of freight rates between Los Angeles and points north and east of Los Angeles, 1916.

istance of 212 miles, and to Lindsay, a distance of than were charged to Kramer, an intermediate point from Los Angeles. The relative position of the own in the diagram given above.

case the rate to Mojave at the time application was

Development of State Retarded

The data which have been prese

system of local rates in Californ upon distance, it soon became profotions of cost, and still more by the p strategic points, and by the occasion rates in order to stimulate the more charges for short hauls in the interpretation of Central Pacific possesses high, because traffic was scant and able to exact a monopoly return. It progressive under these conditions, practice which obtained where the Stonly carrier, rates to points located up

It is generally difficult to criticize upon a priori grounds because the te be found only in the form which it giv the community to which it is appliabelieve, nevertheless, that the local rat Southern Pacific gave an advantage to

few towns which affected unfavorable

rivers, or on competing railroad lines were often extremely irregular. rates in California some observations upon the attitude of California shippers with respect to railroad charges

Conflicting Claims of Cities

The rates of the Southern Pacific and of the Central Pacific railroads were unpopular in California because they were believed to be too high. Beyond this, and when it came to questions of relative adjustments, each community looked at the relations of rates which interested it from the narrow viewpoint of its individual advantage. Indeed, when one reviews the course of the controversy between railroad and shipper in the state, it seems very clear that, apart from questions of excessive profit, the objections which California cities entertained toward the irregular and unequal rates charged by the Southern Pacific Company were only slightly based on considerations of general policy, but were, on the contrary, due to the feeling of various towns that their distributing areas were unfairly circumscribed by the manner in which railroad rates were arranged.

One small piece of evidence to show that competition between rival towns or producing districts was the reason for some of the most bitter attacks upon the railroad, may be found in the complaint of the anti-monopolists of Tulare County in 1885 that their fruits, which ought to have found a market in the southern parts of the state and in Arizona, were subjected to higher freight rates than were the fruits of Sacramento and of San José, points more than 200 miles to the north.⁷

A few years earlier the merchants of Stockton insisted that the rates out of Stockton were extortionate as compared with the rates out of San Francisco. The distance from Lathrop to Stockton was said to be 10 miles, and the railroad rate per ton on wheat was \$1.20, or 12 cents per mile. The distance from

⁷ Declaration of Principles of the Anti-Monopoly Party of Tulare County (Mussell ough Delta, Pebruary 24, 1882).

Lathrop to San Francisco was 82 miles, or more than eight times the distance to Stockton, but the price per ton for wheat was only \$2.50, or about one quarter the price per ton per mile in the first instance. The price per ton from Lodi to Stockton was \$1.40, and to San Francisco \$2.50; but whereas the lastnamed sum was less than twice the former, the distance from Lodi to San Francisco was eight times as great as the distance to Stockton.8

In addition to their contention that mileage rates on shipments into Stockton compared unfavorably with rates on shipments into San Francisco, Stockton residents made the general charge that rates up the San Joaquin Valley were generally less than the rates down the valley. The rate from Stockton to Merced was said to be \$6.80 per ton, but the rate from Merced to Stockton was \$3.40. Stockton objected to forcing of the San Joaquin Valley to make San Francisco its market.⁸

Interstate Commerce Decision

Complaints similar to those voiced by Stockton were registered by the people of Los Angeles. In the eyes of inhabitants of that city, the rates on northbound freight from Los Angeles consigned to the San Joaquin Valley were relatively higher than the rates from San Francisco south into that same valley. Yet, dissatisfied as Los Angeles was with the relation which her rates bore to those out of San Francisco, it seemed to other cities in the south that her position was on the whole more favorable than was that of her neighbors. In 1889 a dealer in the city of San Bernardino protested against being forced to pay a higher rate from eastern points than was charged the city of Los Angeles. He showed that the rate on agricultural implements from the Missouri River to San Ber-

⁸ San Francisco Chronicle, August 27, 1879.

⁹ Stockton Independent, March 10, 1876.

was \$1.27 per hundred pounds while to Los Angeles it was \$1.07. On stoves the rates were \$1.19 and 99 cents, respectively, and on school furniture \$1.55 and \$1.35. This preference was alleged to be discriminative and illegal.¹⁰

In a decision approving the discrimination against San Bernardino, the Interstate Commerce Commission in 1890 remarked that originally southern California had been served from San Francisco direct; and that San Francisco jobbers had covered its territory. When the railroads reached Los Angeles they found it to their advantage to grant it low rates, not so much because it lay near the Pacific Ocean as because the interests of the Southern Pacific and especially of the Santa Fé demanded that some point in southern California should be given such a rate that merchandise from the East could be brought there all-rail and from that point be distributed. The fact that water competition was not the only influence which determined the Los Angeles rate from the eastern states was indeed shown later by the fact that the port of Los Angeles, San Pedro, did not receive a terminal rate until 1910, although Los Angeles itself had been given terminal privileges at least twenty years before.11

Stockton, Los Angeles, and San Bernardino thus illustrate in their conflicting claims the constant effort of cities in California to extend the area over which they might distribute goods. Among other instances of dispute between California cities may be mentioned the demand of Santa Barbara in 1907 to be made a Pacific Coast terminal, 12 and the angry contentions of Santa Clara, San José, Marysville, Santa Rosa, and Fresno

¹⁸ San Bernardino Board of Trade v. Atchison, Topeka and Santa Pé Railroad Company, 3 I. C. C. R. 138 (1890). The Circuit Court for the Southern District of California released to enforce the decree of the Interstate Commerce Commission in this case. (Interstate Commerce Commission v. Atchison, Topeka, and Santa Fé Railroad Company, 50 Fed. 295 [1892].)

¹¹ Harbor City Wholesale Company of San Pedro, California, v. Southern Pacific Company, 19 I. C. C. R. 323 (1910).

¹²Commercial Club of Santa Barbara, California, v. Southern Pacific Company, 12 I. C. C. R. 495 (1907).

HISTORY OF THE SOUTHERN PACIFIC

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in 1914 over the question of relative railroad rates from east points.¹³ The characteristics of the system of transcontiner rates which were involved in these complaints will be discuss in the following chapter.

¹³ Santa Rosa Traffic Association v. Southern Pacific Company, 24 I. C. C. R. 46 (19 29 I. C. C. R. 65 (1914); Transcontinental Commodity Rate to San José, Santa Clara Marysville, California, 32 I. C. C. R. 449 (1914).

CHAPTER XVI

THE TRANSCONTINENTAL TARIFF

t and Railroad Competition

e chief difference between the local situation in Caliand the condition of affairs which prevailed in the case ough shipments to eastern points, lay in the fact that the tition of markets and the rivalry of competing carriers a more important part in the through shipments than did in local shipments. By market competition we the attempt of geographically distinct producing centers, ided by a separate group of railroad lines, to sell in a on area of consumption. Such competition occurred, stance, when California oranges sold in the Mississippi in competition with oranges from Florida, or when rnia lemons sold in the same territory in competition with n lemons imported at New Orleans or at New York. ave already seen that cities competed with each other California itself, but this competition was less important the state than it was in the case of hauls across the ent.

should be recalled that the Huntington interests possessed hal monopoly of local business, while the extent of the tition between carriers on through traffic may be briefly ted by observing that the Central and Southern Pacific nies had direct relations with no less than six other ontinental railroads, namely, the Union Pacific, comin 1869; the Santa Fé, which reached the town of Demind effected a connection with the Southern Pacific in the Texas Pacific, built to El Paso in 1882; the ern Pacific, opened from St. Paul to Portland in 1883;

the Canadian Pacific, completed in 1887; and the Great Northern, which was finished in 1893. None of these railroads reached San Francisco except the Santa Fé, which obtained an independent California connection in the late nineties. The Santa Fé entered Los Angeles, however, in 1885, and the Union Pacific enjoyed a connection with Portland through the Oregon Short Line and the Oregon Railway and Navigation Company as early as 1884. From Portland, Los Angeles, and Vancouver, freight could be distributed by water all up and down the Pacific Coast.1 Moreover, the competitive relations which Pacific Coast cities bore to each other made it necessary to keep their rates from the East on an approximate parity, and caused the Central Pacific to be affected by charges which were not on their face applicable to any point in which that company had an interest. There were combinations in respect to transcontinental railroad business from time to time, but none sufficient to control rates except for short periods.

Transcontinental Rate Adjustment

These differences in conditions between state and interstate traffic doubtless influenced Mr. Huntington and his advisors when they came to establish what is known as the transcontimental rate adjustment. Yet any examination of the through rates charged by the Central Pacific will show that in their relation to each other, at least, these rates were built upon much the same principles as the local rates discussed in the previous chapter. There is no essential difference between a rate schedule which applies a lower rate between New York and San Francisco than it applies between New York and Denver, and one which provides a lower charge between San

¹ In 1887 a steamer of the Pacific Coast Steamship Company left San Francisco weekly for Vancouver, where its freight was loaded upon cars of the Canadian Pacific Company and taken east across the mountains. The Canadian Pacific demanded, and in 1888 was co-ceded, the privilege of accepting freight from San Francisco to Chicago and points east at rates less than those charged by the other transcontinental lines. (Martin v. Southen Pacific Company, I. C. C. R. I [1888].)

Francisco and Los Angeles than between San Francisco and Bakersfield.

The tendency in public discussion is to regard the transcontinental rate structure as different from all other structures. It is not different, either from the rate systems in force in some other parts of the country, such as the Southern classification territory, or from the general arrangement of rates in business local to California. The reason why transcontinental rates to Pacific terminals are low is that there is competition at terminal points. The reason why rates to intermediate stations are high is that competition is lacking at such places. The reason why local rates between San Francisco and Los Angeles are low is that shipments must be diverted from the water lines; while the rates from San Francisco to points in the upper San Joaquin Valley are high either because competition is absent or because it is less severe. Similar general causes in both cases produce similar results.

Rate Structure

It is necessary to describe the transcontinental system at this point in order that the reader may have before him the outlines of the rate scheme for which the Huntington-Stanford group were in part responsible; but in view of the very general understanding which the public has of the system, the description will be brief. A summary account is as follows:

The primary fact in transcontinental rate-making is that railroad rates between the Atlantic and the Pacific coasts of the United States were originally made, and have remained relatively low. The lowest rates quoted, however, have never until recently been available at all points in California, Oregon, and Washington, but only at certain selected cities. The towns to which low rates have been quoted under the transcontinental adjustment are called Pacific Coast terminals. Terminals, being mostly located on the seaboard, or within easy reach of it,

enjoy rates low enough to induce their residents to patronize the rail lines rather than the water lines around the Horn or the combined rail and water routes across the Isthmus of Panama and the Isthmus of Tehuantepec. This does not mean, of course, that rail rates to terminals have been as low as water rates, but it does mean that, all conditions of shipment, including speed, safety, and regularity, being taken into account, the advantages of shipment have been equalized. The rates to and from all terminals have been uniformly the same.

A characteristic feature of the transcontinental rate system is that the rates to towns and cities in the vicinity of terminals are determined by the absence of water competition. Inasmuch as a shipper located at an inland point is obliged to send his goods to the seaboard before he can avail himself of the advantage of a water haul, it becomes possible to charge him a rate equal to the sum of the terminal rate and the local rate which he will have to pay without causing a diversion of his freight from the rail to the water lines. It is true that there is a certain limit to the total charge which can be demanded from such a shipper, due to the circumstance that at some figure the expense of a direct haul from the local point in question to the final destination of the goods upon a non-competitive mileage basis will be less than the combination upon the terminal, but this limit is effective only in the case of communities located a considerable distance to the east of the seaboard shipping point. One result of the application of this system to local points is that towns situated upon the direct line between eastern cities and Pacific terminals often pay higher rates than are charged upon freight passing through these places and carried possibly several hundred miles beyond to the coast terminals. Local communities so situated are known as "intermediate" towns.

These three features of the transcontinental rate structure, namely, that rates between the Atlantic and the Pacific sea-

towns, and that rates to places other than terminals are made by combination upon the terminals, are the elements which have given character to this adjustment, and are therefore the points in it which are best known. To make a statement of the broad outlines of the plan complete, however, two other statements must be added.

Group System in the East

The first additional characteristic of transcontinental rates is that on eastbound business, particularly in the case of the products of California agriculture, the same rates are applied from intermediate as from terminal points. This is to place the shipping communities of the state all upon an equal footing. The second feature has reference to conditions upon the eastern end of the transcontinental haul, rather than upon the western. In the eastern part of the country the system of terminal and intermediate rates is not applied upon transcontinental business. Instead, it has been customary to divide the area east of the Rocky Mountains into a series of great groups, now ten in number, and to quote to each of these groups rates which are either the same in all cases, or which increase as the distance grows greater.

This failure to apply in the East the same principles which govern in the West has been doubtless due to the insistence of cities like Chicago that her rates be at least as low on shipments to and from the Pacific Coast as the rates which New York enjoys, as well as to the desire of railroads which begin at Chicago or the Mississippi-Missouri River to encourage the growth of business in the Middle West. Mr. Huntington was credited with the desire to establish rates from the Missouri River which should be lower than rates from New York, and the reasons which were in his mind may easily be imagined. Such rates were actually in effect between 1887 and 1894, but

the principle of graded charges was abandoned as a result of a rate war which broke out in 1894.2

Terminal Points

This brief description of a complicated rate adjustment will show that in through as well as in local rate-making the Central Pacific management yielded to the unequal pressure of competition, and particularly of water competition, at different points. Generally speaking, the most important of all the forms of competition which the company had to meet was water competition. Common alike to local and to through transportation, this was important because it was difficult to control, because it operated on a low cost basis, because it offered transportation facilities to a very wide variety of classes of goods, and because its possibilities for expansion were indefinite.

It is a mistake to believe that only low-grade commodities have been shipped by the water routes. While it is true that the principal movements by water are of the coarser freights, such as hardware, rails, pipe, sugar, hardwood lumber, and asphaltum, yet there has always been also a considerable transportation of higher grade articles, including cotton ducks and denims, beans, canned goods, and a large number of kinds of

² Business Men's League of St. Louis v. Atchison, Topeka and Santa Fé Railway Company, 9 I. C. C. R. 318 (1902).

When the Interstate Commerce Act was passed in 1887 the transcontinental carriers agreed to grade eastbound rates back to the Pacific Coast. Under tariffs issued April 5. 1887, Missouri River rates were applied for about 350 miles west of the river, from which point they gradually decreased to Denver. The Denver rates were applied from Denver to a point near Green River, over 300 miles west from Cheyenne. From Green River the rates again decreased gradually to the Pacific Coast. The tariff of April 5 was published in order to comply with Section 4 of the Interstate Commerce Law, and it was superseded by other tariffs in April and May, 1887, by permission of the Interstate Commerce Commission. (Martin v. Southern Pacific Company, 2 I. C. C. R. 1 [1888].)

In later years transcontinental rates to interior points were not uniformly built by combination upon the terminals. In many cases, even in westbound rates, the terminal rates served as maxima beyond which intermediate rates were higher than to terminal points, but not by the full extent of the local back. Thus on the Central Pacific in 1902 the company named class rates to intermediate points which acted as maxima to all points, which meant that when the specified intermediate rate was less than the terminal plus the local back, the lower rate prevailed. Nor must the influence of the Interstate Commerce Commission in reducing intermediate rates be left out of account. Yet it was the conclusion of this same commission as late as 1902, that the point where the direct rate from terminal to intermediate destination, was on the average 300 miles east of the Pacific Coast, and in some instances several times that distance, a fact which is sufficient to characterize the system as a whole

rege percentage of the canned goods, together with two-thirds the beans produced in California, originate near enough the coast to reach tide-water at an expense not exceeding cents per hundred pounds. The Interstate Commerce Commission has remarked that almost every article which moves rom the East to the Pacific Coast has been at times carried by the ocean, and the truth of this statement is generally conceded a discussions on the water business.

It was the pervasive character of water competition, and the act that such competition was felt upon the Pacific Coast and ot at interior points, which originally established the position of the Pacific terminal.4 A terminal point, be it recalled, was, and is, under the transcontinental system, a place which enjoys rates low enough to attract traffic from the water to the railroad lines—a point also upon whose rates the rates to other points are based after the manner of the "basing point" system. San Francisco was a terminal. So was Stockton, Sacramento. Port Costa, Richmond, Oleum, Antioch, San José, Santa Clara, Los Angeles, and a considerable list of other towns. At the beginning the city of San Francisco received a lower rate than any other town because the competition of the water route between New York and San Francisco was most evident. Mr. Stanford, however, disclaimed responsibility for this limitation. His eastern connections, he said, were to blame. The Central Pacific was willing to be more liberal from the start, but the other lines would not join with it in establishing through rates, and insisted on their locals. For this reason goods originating t interior points were often hauled to San Francisco, and then ack east, in part over the same line by which they had come.5

³ Business Men's League of St. Louis v. Atchison, Topeka and Santa Pé Railway Comny, 9 I. C. C. R. 318 (1902). See also Rates on Asphaltum, etc., 33 I. C. C. R. 480 (1915).

⁴ In so far as there is rail competition between transcontinental carriers, this rivalry o is keenest upon the Pacific Coast, and weakest in the intermediate territory.

⁵ Report of Senate Judiciary Committee on Assembly Bill No. 10, 1884, testimony S. Stevens.

Such a condition was highly unsatisfactory to California towns other than San Francisco, yet by 1873 Sacramento, Marysville, and San José had been given terminal rates, and still later the list of terminal points was very greatly extended. In 1910 there were 152 terminal cities on the Pacific Coast, of which 97 were in California.

Dissatisfaction with Rate System

Owing to the peculiar intensity of competition at their doors, Pacific terminals therefore enjoyed exceptional advantages in rates as compared with their less favored neighbors. On the other hand, even the terminal cities expressed some dissatisfaction with the transcontinental adjustment. appears, for instance, that the growth of great distributing centers was difficult under the scheme of rates which was applied. So long as terminals were few in number, a considerable concentration in business was possible. But when the terminals multiplied, the territory controlled by any single city became limited by the low rates accorded to the near-by terminal cities, and expansion in any one spot became difficult This rendered the volume of business of the Pacific Coast jobbers comparatively small. In the case of the Business Men's League of St. Louis v. the Atchison, Topeka and Santa Fé, already cited, the two eastern firms of most prominence in the proceedings were the Simmons Hardware Company, of St. Louis, and Hibbard, Spencer, Bartlett and Company, of Chicago. The former of these firms then did business in every part of the United States except New England, while the representatives of the latter testified that the operations of his house were limited only by the confines of the earth. Competition by concerns of this magnitude was difficult for California houses to meet, especially at times when the eastern

⁶ Letter of Stanford to a committee of the San Francisco Chamber of Commerce, 1811.
7 Railroad Commission of Nevada v. Southern Pacific Company, 19 I. C. C. R. 25 (1910).

as used the Pacific Coast as surplus territory in which they ld afford to operate at a low margin of profit.

Another ground for dissatisfaction on the part of the coast es arose out of their belief that the system as applied, in e of its recognition of the advantages of the Pacific Coast, I fell short of the real equities of the situation. It was ined that San Francisco was improperly shut out from Den-Cheyenne, Salt Lake City, and Ogden. The Southern cific was charged with carrying hats from New York by way the Union and Central Pacific routes and then down the San aquin Valley to Yuma at a lower rate of freight than the San ancisco dealer could send the same goods from his city to Colorado River.8 This same complaint was repeated by r. Leeds, of the San Francisco Traffic Association, in tober, 1892, with the observation that if the same rate per le were applied on eastbound traffic from San Francisco that is charged on westbound business from Chicago to Utah mmon points, then San Francisco would do the lion's share the Utah business instead of a mere 16 per cent.9

There is no doubt that a good deal of dissatisfaction with e transcontinental system was felt first and last by shippers and from the terminal cities. Yet, after all, the situation of ese cities as a group was excellent. The communities which ere really handicapped were the towns intermediate between e Pacific terminals and the East, towns which paid higher tes for less service than did the terminal cities, and which and that this condition not only increased the cost of living their consumers, but prevented their merchants from enjoying a profitable distributing trade.

It seems probable that the associates intended from the ginning to charge the mountain towns more on through uls than was exacted from towns on the coast. Huntington ates a conversation which took place at Carson, Nevada, in

San Francisco Bulletin, March 26, 1802.

⁹ Ibid., October 12, 1892.

1861, between Stanford, Dr. Strong, Mr. Crocker, and himself, representing the railroad, and some twenty representative men of Nevada. The Nevada people observed that Huntington kept a pretty good hardware store, but that he was likely to leave it in the mountains if he started to build a railroad in Nevada. Huntington replied that he would look out for that but, he continued, when the road was built he proposed to charge through rates which, while less than the Nevada people were paying for goods which then came to San Francisco by boat and were subsequently teamed across the mountains, would be materially greater than the rates to San Francisco. "We shall charge you for bringing back," said he, "almost as much as we shall charge from New York," After the road was built Huntington says he met one of these same men with whom he had talked in 1861. "Said I, 'You recollect that talk we had in the Curry House in 1861?' 'Yes, oh yes.' Well, we talked about that. He said, 'You've got me there, Huntington.' 'Well,' said I, 'I said you would grumble. Now,' said I, 'you shut up.' "10

Objections

It is to be presumed that Mr. Huntington's rejoinder was effective in the particular discussion which he relates. Yet the grievances of the interior towns found full and repeated expression after 1869, and indeed are still emphatically presented at the present day. The more fundamental criticisms of the transcontinental rate system are the following: The principal objection directed against the whole adjustment is that it leads to charges to intermediate points which are prima facie unreasonable. Speaking of the rates on iron and steel, a representative of the Traffic Bureau of Utah called the attention of the House Committee on Interstate and Foreign Commerce in 1918 to the fact that the rate on iron and steel articles

¹⁰ Huntington manuscript, pp. 27-28.

or export from Chicago territory to Pacific Coast terminals ras 40 cents per hundred weight or 3.54 mills per ton per mile. He continued:

They take an identical carload of the same commodity, and when it is going to the Pacific Coast for domestic consumption the rate is 65 cents a hundred, or 5.76 mills per ton-mile. If they were to apply that rate at the Utah common points—the same 65-cent rate—it would pay 8.65 mills per ton-mile. But they say, "We cannot afford that; you must pay 10.84. We haul it for a man in Russia for 3.54, but that is only the out-of-pocket cost. We will make you a rate of 10.84, which is a lower rate than you are entitled to.

I think any article, whether it is transportation or anything else, that could be produced at some profit at a price of 3.54, when you pay 5.76 for it you are paying a handsome profit; and if you pay 8.65 for it you are paying an abnormal profit; and if you pay 10.84 for the same thing you are being outrageously imposed upon, which is what we are doing.¹¹

The second objection of the interior cities is that the system of transcontinental rates limits the territory in which intermediate wholesale firms can do a distributing business; and the third ground of complaint, resulting from the other two, is that the policy of permitting low rail rates to the coast cities has the effect of building up large cities on the seaboard at the expense of the whole interior country.

Reply of Railroads

In replying to these objections the coast towns take the position that they are not especially concerned with the rates to intermountain places, nor indeed with the rates which the railroads make from coast to coast, except in the sense that the reater the number of carriers which participate in transconti-

¹¹ Hearings before the Committee on Interstate and Foreign Commerce of the House of spresentatives on H. R. 9928 (55th Congress, 2d Session, March 26 to April 2 - 55, testimony W. S. McCarthy).

nental business, the better the service is likely to be. Secure in the possession of adequate water connection, they do not expect to pay higher rates than they have paid in the past, whatever policy the railroads may adopt. They have no controversy with the intermediate territory, and only support the present adjustment because they conceive it to be for the best interests of the country as a whole.

The burden of the defense therefore falls upon the railroads, and the railroads assert that the policy of quoting low rates to meet the force of water competition is necessary if the comparatively moderate rates to intermountain territory are to be continued. Unless-said Mr. Spence of the Southern Pacific, in his recent testimony before the House Committee on Interstate Commerce—the rail lines are permitted to make rates which will hold the through business, the terminal roads will lose all of the net revenue derived from the port rate upon what is a very large volume of traffic. The millions of dollars involved cannot be withdrawn from the net revenues of the railroads without impairing their efficiency and usefulness, while to compel the carriers to apply sea-compelled rates to all traffic would vield an inadequate revenue, because it would mean that the traffic as a whole would be carried at rates which were not sufficient to cover all the elements of cost, including fixed charges and other similar expenses.12

Further Comments

The most casual description of any basing system such as the one which the railroads apply to transcontinental freight, suggests at once several matters in respect to which special defense and justification are required. One just cause of complaint arises out of the fact that the through rate to any point

¹² Hearings before House Committee on Interstate and Foreign Commerce, 185, 12.
pp. 170-71, testimony, L. J. Spence.

cept to a basing point is made up by the addition of two rates, ich of which includes an allowance for the cost to the carrier providing terminal facilities, or four terminals in all, thereas no actual shipment makes use of terminal facilities at more than two points, namely, the place of origin and the place of destination.

A second cause for criticism of a basing system is due to ne striking disregard of distance which is inherent in it. hippers are not only apt to feel that for reasons of natural ght rates for transportation should vary with the distance loved, but, as we have seen, they are usually quite incapable of eing convinced that the costs of shorter hauls are not less an the costs of longer ones, so that for this reason also he nearer places should enjoy the lower rates. Again, and this lso has been suggested in the preceding discussion, a basing ystem is attacked because it is said to centralize business nduly by forcing the distributing business into the control of few localities such as the Pacific Coast terminals, to the xclusion of outlying cities which could handle it more cheaply nd more conveniently under a proper adjustment of rates, by eason of their greater nearness both to centers of supply and of consumption.

There is no question that the rate system upon the Pacific Coast made it difficult for intermediate and local towns to import supplies directly from the East and to distribute them through their own organization. This was not the result of the difference between terminal and local rates alone, but was the combined result of the practice of the transcontinental carriers with respect to rates and their practice with regard to carload hipments. That is to say, the carriers not only quoted generally lower rates, carload against carload, and small consignent against small consignment, to terminal cities than to termediate or to interior towns, but they also granted many rload ratings to terminals which were altogether denied to

their interior competitors. In some cases this occasioned an extraordinary difference in the total charge.

On the other hand, it should not be forgotten that to encourage distribution through Pacific Coast terminals was not necessarily to concentrate the whole business of distribution. The competition between the Pacific terminal and the eastern jobber was just as real as that between the Pacific terminal and the intermediate point. It is sometimes forgotten how active this eastern competition was. That it continually threatened the western distributor is shown by the fact that in spite of the advantages enjoyed by western terminals, 50 per cent of the jobbing business in the hardware trade in southern California was done in 1902 by houses east of the Missouri River, so that the Interstate Commerce Commission expressed the opinion that in the absence of some distinct advantage in the rate it would be very difficult for Pacific Coast dealers to hold their own.18 In central California the proportion of the jobbing business done by eastern firms ranged from 25 to 40 per cent. Certainly no decentralization in business would have taken place had the California distributors been compelled to withdraw in favor of men in Chicago and St. Louis, nor would the aggregate cost of getting goods from producer to final consumer have been decreased.

Inconsistency

It has been made clear in the discussion of transcontinental rates, that the transcontinental carriers as a group have not been consistent in applying the principles upon which they rely in justification of their charges. Not only have towns like Los Angeles been given terminal rates for reasons of general policy, but cities in the Mississippi Valley, upon the other end of the transcontinental haul, have been granted the same reasons as New York on business to and from the Pacific Coast

¹³ Business Men's League of St. Louis v. Atchison, Topeka and Santa Pe, sup. cit.

when the matter was brought to its attention, there is no begical ground for recognizing the desire of Chicago to compete with New York, and for refusing to accord the same privilege to Denver. If market competition is to be recognized in one instance, it should be in another.

It is a striking fact that when the commission was considering the question of transcontinental rates in 1910, it appeared that the great bulk of traffic destined to intermountain cities riginated at Chicago or at points west. Thus out of 21,000,pounds of carload freight moved from eastern territory to Reno, Nevada, during the year 1908, only 4,500,000 pounds ariginated east of Chicago, and of approximately 1,000,000 pounds of less than carload freight concerning which data were available, only 10 per cent originated at the Atlantic Coast cities of New York, Boston, and Philadelphia. The commission found in the case in which these facts were brought out that taking traffic to Reno as a whole, 75 per cent of it had its source between Chicago and Denver. 15 On this traffic, at least. the effect of water competition was slight, and yet it is upon the assumed presence of water competition that the transcontinental system primarily rests.

Not Responsive to Changed Conditions

Nor have the transcontinental carriers been quick to recognize changes in conditions which, temporarily at least, have diminated water competition from coast to coast. When the Panama Canal was opened, considerable apprehension was felt

¹⁴ Kindel v. Atchison, Topeka and Santa Fé Railway, 8 I. C. C. R. 608 (1900). In its first exercise of authority under the amended long- and short-haul clause, the Interstate Commerce Commission of 1911 prescribed the extent to which rates from eastern points of win at and west of the Atlantic seaboard to Reno and other points upon the main line of the Central Pacific might exceed the rates to Pacific Coast terminals. (Railroad Commission of Nevada v. Southern Pacific, 21 I. C. C. R. 329 [1911].) Cf. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. R. 611 (1915).

¹⁵Railroad Commission of Nevada v. Southern Pacific Company, 19 I.C.C.R. 238 (1910).

by the carriers lest the new all-water route between the Paciand the Atlantic seaboards should divert a substantial portion the transcontinental traffic formerly handled by the railroad On this ground the railroads applied to the Interstate Comerce Commission, and received permission not only to extinue the practice of quoting higher rates to interior too than were charged between eastern points and the Pacians, 16 but actually to increase the difference upon a selection of eastbound articles. 17 So much was directly in line with previous action and was to be expected.

The carriers were not, however, so ready to recognize the interruption of canal traffic as they had been prepared to take notice of its beginning, and in spite of slides and war conditions which suspended water competition, it took an order of the Interstate Commerce Commission to secure an equality in the treatment of intermountain and seaboard cities to which the former in accordance with the fundamental theory of transcontinental rates were entitled under the new conditions. 18

In forming an opinion upon the rate system of the Central Pacific, however, too much weight must not be attached to inconsistencies in application so long as these are not altogether arbitrary, any more than to the demand of competing cities for their "fair share" of the business that is to be done. City ambitions are limitless, and impossible to reconcile. The question is not how to determine the territory within which a given city may be said to have a right to distribute its goods, but whether or not the rate system introduced by the Huntington group, all things considered, promotes the interests of the territory which is served better than some system that may be suggested.

¹⁶ Commodity Rates to Pacific Coast Terminals, 32 I. C. C. R. 611; 34 I. C. C. R. 43 (1915).

¹⁷ Daggett, "The Panama Canal and Transcontinental Rates," (in Journal of Political Economy, December, 1915); Rates on Asphaltum, etc., sup. cil.

18 Reopening Fourth Section Applications, 40 I.C.C.R. 35 (1916); Transcontinental Rates, 40 I.C.C.R. 236 (1917). See also Skinner and Eddy Corporation v. United States, 39 Supreme Court Report 375 (1919).

using Rate System Necessary

It is the writer's opinion that the transcontinental rate stem has always had evident defects. In the first place, it has nerally provided low rates to towns and it has quoted low tes on commodities which have no access to the water routes. the absence of competition the distance principle should pre-Second, it has often failed in the past to make concessions the cost basis of rate-making, which would have removed complaint without altering the plan in principle, such concesions, for example, as the reduction of rates to interior points something less than the sum of through and local rates to low for the relatively small amount of terminal service rendered. And, finally, it has increased the amount of transportation incident to the distribution of a given amount of freight. While the assertion of cities without terminal privileges that they have the right to do a specified amount of business is to be received usually with skepticism, it does seem probable that the transcontinental railroads would have reduced the aggregate cost of distributing transcontinental freight had they encouraged more than they did the growth of the interior towns, provided that they had supported these towns both against Chicago and St. Louis and against the Pacific Coast.

This same policy would have had the important advantage, from the railroad's point of view, of developing industry at points which were not affected by every change in the rates of its competitors. The Central Pacific was not the first railroad in the country confronted with the problem of how to treat the non-competitive points upon its lines. Nor, unfortunately, was it the only railroad which adopted the drifting policy of quoting rates to hold the business, thus favoring the towns served also by its rivals in preference to towns more peculiarly its own, and through the stimulus given to such places, in the end creating a distribution of production which, of all possible

alternative distributions, was the one which rendered its I upon the business of its territory the least secure.

In spite of these defects, it is the writer's judgment t some basing rate system, in its broad outlines similar to transcontinental system actually applied, was necessary and sirable for the development of the West. The principal adv tages of such an arrangement were that it gave to the Pac Coast the benefits of competing rail and water routes as no tance system could have done, and that it enabled the railro to fill their trains with traffic which paid them something o the out-of-pocket costs. It is clear that the interior cities w mistaken in supposing that this practice increased the ra which they had to pay. On the contrary, it reduced the There is also reason to believe that the transcontinental r system decentralized the distribution of goods, while it certain afforded western buyers and producers in most instances important advantage of access on equal terms to the markets Chicago and of New York.

There is little evidence that either Huntington, Stanfo Crocker, or Hopkins had an active part in moulding the loor the through rate structures of the Central and the South Pacific railroads. The work was probably done by the tra experts whom they hired, of whom the chief was that very a individual, J. C. Stubbs. The contribution of the associa may be taken to have been a clear appreciation of the advant of monopoly to railroad revenues, and the consistent supp which they gave to the efforts of men who knew more ab the subject of railroad rates than they did themselves.

CHAPTER XVII

THE TRAFFIC ASSOCIATION OF CALIFORNIA

iscontent

The discussion of the transcontinental rate structure leads sturally to a consideration of a very serious controversy in hich the Southern Pacific became engaged in 1891. This introversy arose as the result of an attempt by certain meriants of San Francisco to secure lower distributive rates in a interior California valleys. The official statement of the hippers' side of the case in this lively conflict of the nineties as been compiled and published. No similar statement of the position of the railroad has come out, but the important acts are pretty well on record.

There is no question that the political and commercial blicies of the Southern Pacific had by 1890 engendered stlessness and discontent among the commercial classes on e Pacific Coast. It was believed that railroad rates from e East were high. It was thought that use of the water lines d been limited by the special contract system while that was force, and that water competition had been affected subsently by arrangements between the transcontinental lines and e Pacific Mail Steamship Company. The work of the State ailroad Commission had proved disappointing. In short, the tuation was such that it needed only the pressure of the business depression of 1890 to 1897 to stir men to vigorous ction.

¹Wheeler, "The Valley Road—A History of the Traffic Association of California, the tague of Progress, the North American Navigation Company, the Merchants' Shipping sociation, and the San Francisco and San Joaquin Valley Railway" (San Francisco, 196). See also Walker, "Pioneers of Prosperity" (San Francisco, 1895).

first to last the overwhelming proportion of the association funds came from San Francisco.

The government of the Traffic Association was placed in the hands of an executive committee from which were to selected the usual executive officers. All power was to be vested in the committee; that is to say, the executive committee was to have, in general, entire control and management of the affairs of the association, and in particular was to appoint a manager and other employees, who were to be relied on for the active work. By a special section the committee reserved the right to route all freight of members, should emergency require it and provided that the action was approved by at least ten members of the committee. Membership fees ranged from \$60 to \$150 per annum, payable quarterly in advance. Moreover, the constitution provided that any unusual work undertaken for the benefit of any particular line of trade, which entailed any unusual expenditure, should be charged pro rata to the firms or corporations most directly affected, and in accordance with the benefits derived. No membership was to be for a shorter period than two years.⁵

Functions

Inasmuch as some controversy later occurred with respect to the proper purposes of the Traffic Association of California, it is necessary to be explicit regarding the functions which, at the beginning, it was expected that the association would perform. According to the statements of its promoters, the association was not formed to fight the Southern Pacific or any other individual railroad company. The assertion was repeatedly made, on the contrary, that the intent was, by organization, merely to enable the shippers of California to deal collectively with the railroads, instead of one by one as hereto-

⁵ The constitution of the Traffic Association is printed in full in the Sam Prants Bulletin, November 4, 1891.

re, and so to secure a presentation of the shippers' point of iew which would carry weight by reason of the united entiment behind it. In this way the shippers' bargaining were would be improved without giving legitimate cause for affense to parties upon the other side, and without exposing adividual complainants to retaliation.

In the invitation to the mass meeting which took up the puestion of organization on the 17th of October in San Francisco, it was explained that merchants, producers, and hippers could accomplish nothing at that time because they were disorganized. By opposing a solid front to the railroad mobine, it was said, a good deal could be accomplished. Further, it was declared that the railroad would not resist such a movement. J. B. Stetson, chairman of the mass meeting, tated:

Our object . . . is to organize a Freight Bureau or Traffic Association or whatever it may be termed, whose purpose shall be for mutual protection and extension of the interests of San Francisco; for overcoming, by united effort, discriminations and inequalities against the interests of San Francisco; for representation in conferences upon matters of importance to the shipping public to and with railroad or transportation companies. Associations similar to the one we propose forming here are in existence in all the eastern cities, and great benefits have accrued from them, and will not fail to prove successful here. We do not meet here for the purpose of waging warfare or encouraging antagonisms between the shipping public and the railroads, or any transportation lines. We believe that the same theory would govern them as would govern ourselves as business men in the redress of any grievance of our customers. We believe that by united action we can present to the railroad and transportation companies views in re to freights, classifications, etc., that will cause them changes that will be beneficial both to ourselves them . . . I cannot too earnestly advise prudence and in the outset, for if this association is started properly

and manufacturers to be held on O This mass meeting occurred as plan discussion, and amendment of pre final indorsement of a plan for jo it was declared to be the sense of t zation be formed, that the manager executive committee and to the usu be derived from dues. Most of dried. Among the incidental but meeting, however, was an address b calling for the construction of anot the presentation of a communication ing that the Santa Fé be induced to and that provision be then made for that city and San Francisco.8 The net result of the meeting o

> an interest in the plan for a shi encouraged the promoters to go all the meeting provided the machiner gress possible. From now on, ma executive committee was appointed

send representatives to a mass meet

itution and set of by-laws was adopted by the association, and n November 2 a general call for members was issued. 10

nterior Towns

It was in securing members that the Traffic Association met with its first check-a check which consisted in the general refusal of residents of the country districts and of the interior towns to join with San Francisco in its fight against the railroads. It has already been pointed out that 97 per cent of the members of the association did business in San Francisco, and the check came in spite of a deliberate and persistent attempt by the Traffic Association to conciliate the interior. It was partly with the idea of gaining support from outside of San Francisco, for instance, that the mass meeting of October 17 changed the name of the association from that of "Merchants' Traffic Association of San Francisco and the State of California" to the simpler "Traffic Association of California." Another concession was the appointment of four outside members to the controlling executive committee—a proportion far exceeding either the relative outside membership or the funds contributed from that source. Still other attempts to gain support were made through meetings held in Fresno and San José at which the advantages of the Traffic Association idea were presented.11

Dissension

There appears, however, to have been some difference of opinion within the Traffic Association itself with regard to

¹⁰ San Francisco Bulletin, November 4, 1891.

¹⁰ San Francisco Bulletin, November 4, 1891.
¹⁰ It was the position of the executive committee of the Traffic Association, and in this were supported by the traffic expert whom they employed, that it would be exceedingly policy for San Francisco to antagonize the interior by endeavoring to secure special adages for itself. (San Francisco Chronicle, December 10, 1892.)
The Traffic Association was said to be, under its constitution and by-laws, a state intion, organized to promote the welfare of the whole state. The executive committee not believe that San Francisco should be made the sole terminal even were this possible, city would assume its proper and legitimate place not as the oppressor, but as the ector of every industry in the state, provided free competition and equally adjusted rates could be secured. (Ibid., December 18, 1892.)

the best policy to be pursued toward the interior. The fund mental complaint of San Francisco was that her distribution territory was being curtailed. Isidor Jacobs said quite franks that San Francisco jobbers believed at the time when the Traffic Association was formed that the jobbing interests of the city were in a bad way. It was claimed, and with reason, it said, that San Francisco had natural advantages, and that is recognition of these advantages railroad rates from easter points to San Francisco should be sufficiently less than to interior points, to enable San Francisco jobbers to control to distribution even of eastern goods as far as many Neval points on the east, and as far as Tucson, Arizona, on the south.¹²

Ideas the same as those expressed by Mr. Jacobs appeared in a petition made public in December, 1892, and signed by over 150 firms in San Francisco, and in an address published the same time which purported to be signed by 75 per cent of the membership of the Traffic Association.¹⁸

Nor were there lacking specific complaints to the same general effect. A San Francisco merchant explained that he had a carload rate of \$1.75 per hundredweight on goods which he imported from Chicago to San Francisco. The rate on a hundredweight of the same commodity from Chicago to Fresno was \$2. The local rate from San Francisco to Fresno was nearly half the rate per hundredweight from Chicago to Fresno, being in fact 90 cents per hundredweight. The addition of the 90 cents to the carload rate of \$1.75 made it evident how small a chance he had to do a jobbing trade with the interior in these goods. Another San Francisco dealer, a grocer by trade, was reported as saying that he had been compelled to give up his grocery business because his customers could buy directly from

¹² San Francisco Chronicle, November 3, 1892.

¹³ Ibid., December 7, 1892. The reply of the executive committee of the Traffic Association to this address is printed in the San Francisco Examiner, December 18, 1892.
¹⁴ Sacramento Union, April 4, 1892.

the East more cheaply than he could supply them. The same man asserted that his customers could save a cent and a half per pound on tobacco by dealing direct with Chicago. 15

It was unfortunate that dissension arose within the Traffic Association on so fundamental a point of policy as the proper attitude that should be taken toward interior towns, for the effect was, in spite of the best efforts of the men in control of association affairs, to deprive that body of the support of the interior. Moreover, opportunity was given to newspapers friendly to the railroads to attack the whole project as a selfish attempt on the part of San Francisco to improve her distributing position. The leading paper which took advantage of this opportunity was the Sacramento Union. This journal for a number of months denounced San Francisco as a city of hucksters, seeking a monopoly of the jobbing and wholesale trade of the Pacific Coast, not in the interest of the consumer, but in order to widen the margin between the cost of goods in which they dealt and the price at which these goods could be sold on the market. The charge was not fair, but the attitude of Mr. Jacobs and his friends embarrassed the Traffic Associaion in denying it.

Traffic Manager

In spite of the unwillingness of the state as a whole to join n a campaign which appeared to be designed primarily in the nterests of San Francisco, the promoters of the new movement proceeded systematically with their plans. On November 18, 1891, the executive committee appointed a subcommittee to select a traffic manager for the association. Much depended on the choice, and the committee was fortunate in the man whom it secured, Joseph S. Leeds, of Ohio. Mr. Leeds was an individual of marked ability, with a valuable railroad ex-

¹⁵ Ibid., May 13, 1892. San Francisco merchants declared that it was cheaper to send tails from San Francisco to Bakersfield via Los Angeles, water and rail, than to move them firect by rail over the floor of the San Joaquin Valley.

This was done after a meeting of March, at which the committee vote should be established between Nev and referred the preparation of p president and manager of the association

In response to the proposal of of the larger jobbing firms in San 1892, a so-called "Merchants' Ship the purpose of the new body to fir as proposed, and to cause it to be with the existing lines of William Sutton and Beebe, concerns which ducted in the interests of the Sout ambitious an undertaking for the Twrite with its slender revenues of a

Three months later, in Augu Shipping Association was largely fund of from \$85,000 to \$100,000 time most of the leading wholesa joined. The Traffic Association to the enterprise, and was reported ooo to the guaranty fund just ment

to supply at least two-thirds of the freight. According to statements made at the time, Grace and Company were expected to find freight in the open market up to one-third of the apacity of their boats. Practical details of operation were kit entirely in the agents' hands.¹⁸

Effect of Competition

Some hint of the attitude of the older transportation companies toward this new rivalry may be found in a circular issued by the Traffic Association under date of June 22, 1892. This circular, after referring to the new Grace line, and after speaking also of the Atlantic and Pacific Steamship Company, and of a new clipper line established by Balfour, Guthrie and Company, continues as follows:

It has already been given out by the old lines that these new competitors in the field will be short-lived, and that shippers who desert the old lines at this time will be remembered when the competitors are out of the way.

For your information we desire to state that the new lines have been thoroughly investigated by the Committee and we are satisfied as to the reliability and stability of the enterprise, and that with our support they are here to stay and deserving of our patronage.¹⁹

In spite of the attempts of the older companies to crush the new adventure at its inception, the clipper ships thus stablished in 1892 with the support of the Traffic Association maintained an active competition with the railroad and older sailing lines over a period of more than a year. Short as this period was, there is no question that the effect upon water rates between San Francisco and New York was tremendous. The

¹⁸ The Merchants' Shipping Association continued in active operation until January 1, 1894, when Grace and Company agreed to carry on the business on their own account. The last boat to arrive in San Francisco was the "Charles E. Moody," of 1,915 tons. The next was were the "T. F. Oakes," of 1,897 tons, and the "Emily Reed," of 1,488 tons. Subsequently, still other vessels were added.

¹⁹ San Prancisco Bulletin, June 24, 1892.

former rates of the Sutton and Beebe and of the William Dimond and Company lines had been about \$15 a ton. The rates charged by all lines during the summer of 1892 were from \$3.50 to \$6 a ton, a figure certainly below the cost of operation. 20

This reduction in rates, and the tacility which merchant in San Francisco enjoyed in securing through bills of lading by sea and rail from San Francisco to points on the Missour River by way of Cape Horn and New York, enabled shippers to reach the interior Mississippi Valley at a rate and with a convenience superior to that obtainable by rail. According to the San Francisco Bulletin, indeed, it was \$2.15 a ton cheaper to send California canned goods from San Francisco to Kansas City by sea and rail than to ship them by rail direct. On west-bound freight the results were the same. The rate on cannel meats from Kansas City to New York was \$9.40 per ton. The rate from New York to San Francisco by sea, after adding interest and insurance, did not exceed \$15 per ton, making a total of about \$25, which was \$10 less per ton than the direct rail rate from Kansas City to San Francisco.²¹

On heavy iron products the figures were quite as striking. The all-rail rate on a number of such products was \$24 from Pittsburgh to San Francisco. From Pittsburgh to New York the rail rate on the same articles was \$3 a ton. Adding to this \$6 per ton for the clipper rate from New York to San Francisco, \$1.25 per ton for insurance, and \$2.50 per ton for interest, the total became \$12.75, or \$10.25 per ton less than the all-rail rate.²²

No wonder that the business of the water lines increased, and that railroad rates materially declined. Thus the rail rate on canned goods out of San Francisco, which had been \$1 per

³⁰ San Francisco Chronicle, August 6, 1892.

³¹ San Francisco Bulletin, August 4, 1892.

¹² San Francisco Examiner, August 18, 1892.

dred pounds, was reduced to 75 cents to Chicago and to cents to New York. The rate on beans fell from \$1.10 to and 50 cents to the same destinations. On wine, brandy, ax, and wool, rail rates declined from 25 to 35 per cent.23 So far as the quantity of freight moving by water was conned, it was estimated in August, 1892, that 42,000 tons of ght were on the way by sea to San Francisco from New rk, and that 15,300 tons more were on the way via Cape rn from Philadelphia. Twenty-four vessels were at sea or ding, bound from the Atlantic to the Pacific coast.24

continuance of Pacific Mail Subsidy

The work which fell to Mr. Leeds and to his associates n the Traffic Association clipper ship committee in this iggle between the rail and the water lines, was largely that propaganda. This meant interviews with shippers to imss upon them the importance of the contest which was being red against the railroads and against the Southern Pacific particular. It meant also the soliciting of subscriptions to clipper ship guaranty fund. Mr. Leeds threw himself prously into the fight, and as the movement progressed he wed his satisfaction to appear. He wrote the Merchants' pping Association in August, 1892:

I venture the prediction that if this movement is placed upon a permanent footing the Pacific Mail subsidy which has been assessed against the commerce of the coast for many years will be discontinued . . . I predict that this will, if properly supported, prove the beginning of the end of commercial oppression for this city and this State. The doctrine of helping yourselves by every means you can command, holding fast to that which you have and reaching out for more, will prove the deliverance of San Francisco.25

²³ San Francisco Bulletin, January 5, 1893. ²⁴ Walker, "Pioneers of Prosperity," sup. cit., p. 173. 25 San Francisco Bulletin, August 31, 1892.

It was doubtless a considerable satisfaction to Mr. Leed and to members of the Traffic Association that the water competition so vigorously inaugurated by the Merchants' Ship ping Association was increased late in 1892 by the formation of an independent steamship line known as the North American Navigation Company. The foundation of this new company was not directly due to the Traffic Association, although the Association gave it what support it could. It was rather the result of the discontinuance of the railroad subsidy to the Pacific Mail, which actually took place in 1892, as Mr. Leeds anticipated, and to the consequent separation of the Pacific Mail and the Panama Railroad Company-a separation which assured to an independent steamship line upon the Pacific Ocean equal or even preferential treatment at the Isthmus of Panama. This meant that San Francisco shippers were no longer restricted to clipper ships and to the Cape Horn route, but could promote a shorter and speedier line with reasonable hope of success.

In the year 1892 the transcontinental railroads determined to dissolve the transcontinental railroad association. reasons alleged were the withdrawal of the Northern Pacific Railroad from the association, and the announcement by the Canadian Pacific of reduced rates to take effect September 10. The dissolution of the association meant the termination of the subsidy which the railroads had been paying to the Pacific Mail, and notice of cancellation was promptly given. The Pacific Mail was then paying to the Panama Railroad \$55,000 per month, an amount that was more than 70 per cent of the sum which it received from the association. In spite of the termination of its own relations with the transcontinental railroads, the Pacific Mail offered to continue the payment of a subsidy to the Panama Railroad, but the two companies proved unable to agree on terms. Mr. Stubbs later explained the break as follows:

When the contract between the Panama Railroad Company and the Pacific Mail Company expired, they found it impossible to agree on terms for continuing the business. The transcontinental railroad companies had quarreled, and freight rates were demoralized. The Panama Railroad insisted on the former basis of traffic, and the Pacific Mail refused to go thead on that understanding. Then there was some bad management, and the two companies began to throw mud. The rouble got into the courts, and finally it was called to the attention of Congress. The Panama road and the Pacific Mail conequently found themselves to be bitter enemies, and it didn't eem that they could agree.²⁶

ependent Steamship Line

Now it appears that a San Francisco shipping firm, the ison-Locke Mercantile Company, which was participatin the anti-railroad fight in 1891 and 1892 to the extent operating a line of steamships around the Horn, noticed graphic advices in the San Francisco newspapers announce the termination of relations between the Pacific Mail and Panama Railroad. Describing the episode, Mr. Johnson r said:

I felt this was our opportunity, and immediately wired General Newton, of the Panama Railroad, suggesting that, in riew of their determination to throw open the Isthmus and put m a line of their own steamers from New York to Colon, I hought we could secure the co-operation of the merchants of San Francisco, in this movement; that we had some steamers we were running between San Francisco and New York via Cape Horn, and asking, in the event of our organizing a company here, if they would join this company in maintaining a through line from San Francisco to New York.²⁷

At this time the Panama Railroad was under the control the official liquidator of the French Panama Canal Com-

^{**} Sen Francisco Examiner, January 9, 1894. Cf. statement by General John Newton, ident Panama Railroad Company, ibid., November 29, 1892.

77 Wheeler, "The Valley Road," sup. cit.

pany. The railroad had already decided to operate a line of steamships between New York and Colon, and it accepted readily Mr. Johnson's offer from the West. Yet Johnson himself lacked capital—as his own statement admits. To raise the necessary capital a new company—the North American Navigation Company—was at once organized, and subscriptions were solicited from San Francisco business men. Not all those approached were enthusiastic. Some merchants were afraid of antagonizing the Southern Pacific, some had an interest in it. James G. Fair said: "I am holding some millions of dollars in Southern Pacific bonds. Do you want me to put my eggs in a basket, get on a fence and chuck stones at it?" "

On the other hand, the promoters of the new company were able to make a strong plea based on the unsatisfactory conditions of water transportation in previous years. For the first time in fifteen years San Francisco shippers had a remedy in their own hands.

With the successful operation of this company, San Francisco need fear no excessive prohibitory rates from the Transcontinental or similar associations; the relief in transportation will be immediate and ample, which, together with sailing ships via Cape Horn, solves the immediate question of cheap transportation, freedom from excessive freights, and makes our city again the distributing point, instead of an isolated terminus of a long haul by rail.²⁹

The Raising of Funds

The original intention was to raise a fund of \$100,000, and it appears that the Panama Railroad agreed to enter into a contract with the North American Navigation Company providing that sum were subscribed. When \$80,000 had been promised, however, the promoters solicited the aid of the re-

²⁸ Wheeler, "The Valley Road," sup. cit.

³⁹ San Francisco Examiner, January 21, 1893.

capital to the sum of section to the i such concesses as assessment was training and Hole amount statuted many term states the life than the re rached the promoter promoter are it with the Francis Library Francis me very over stic, perhaps they had the the manner of making seen had should not be since a new are not the the contract and them agreed to include scatters San Francisco de final des un numer von de rai de Ishmus. The ME of the times was not arraged e public was informed the or view of the effect is and log and that it gave in the North American Norganian any the exclusive figure of manager filling between York and San Francisco of way to the learner to 1 ma. 30

When the time came to include the instrument and the er this contract, the Navaganta Tampan it made to the imfortable position of a time to the important response ies and no money with which is meet them. Not a della he capital stock had been paid in and only \$150,000 had subscribed. Under these promiseances certain of the viduals most interested personally guaranteed the charte of the first boat, and the same was done for the second for the third, at intervals of twenty days. Before the tox ved for the departure of the fourth vessel, the entire Saxo. asked for had been pledged. By December, 1803, this exhausted, and \$100,000 more was raised—not within culty, and with some feeling of discouragement on the p he promoters.³¹ The additional subscription made and continuance of the service approximately till the 18 y, 1894, or for a total period of a little over a year Th

San Francisco Examiner, Pebruary 28, March 5, 1893.

¹ lbid., December 20, 28, 30, 31, 1893, and January 3, 1894.

is some evidence that the managers of the company desir still further extension, but if an attempt of this sort was n it met with no success.

During the life of the North American Navigation (pany five steamships were chartered: the St. Paul, Me. Keweenaw, Progreso, and Saturn. The "St. Paul" and "Mexico" were small boats, with a net tonnage, respecti of about 700 and 1,350 tons dead weight. The net tonnage the "Keweenaw" was reported to be 2,004 tons, that of "Progreso" and "Saturn" somewhat less.32 Some passer were carried by the line, but not many. The Pacific Mail operated five vessels with capacity carrying from 2,00 2,500 tons. These were all small craft as compared steamers of the present day. The original program, as been said, called for a twenty-day interval between sail and the total estimated time consumed in shipment from Francisco to New York was put at thirty-two days. It of scarcely have been expected that these ships could accor date any large portion of the business of the Pacific Coast indeed was there much chance for them to earn any cons able profit on the business which they did carry. The fact so large a guaranty fund was insisted upon by the Par Railroad before any exclusive through billing arrange would be made, is evidence that a deficit was expected. matter of fact the total fund of \$300,000 was used up be the fifteen months contemplated in the original agreement entirely expired.

Drop in Railroad Rates

The principal purpose of the North American Naviga Company was, beyond question, to compel a reduction in tr continental rates by rail and water by demonstrating that business men of San Francisco could establish an indepen

³² San Francisco Examiner, April 1, 1893.

nection of their own. This accounts for the enthusiasm h which the project was greeted in the community at large. e Navigation Company was looked upon as a kind of St. orge tilting against the dragon of monopoly. The news-ers printed colums of description with pictures of the boats artered by the new line, the promoters gave out interviews, I crowds gathered at the wharves to see the vessels leave. It was by pointing to the rate reductions accomplished that company subsequently justified itself.

Mr. Leeds, manager of the Traffic Association, estimated it the 84.000 tons which he thought the new steamship line ruld handle, added to what the clipper ships were carrying, ruld leave about 250,000 tons for the railroads to transport m coast to coast. On this he expected to see a decline in es of not less than 20 per cent. More exactly, he calculated at the saving to shippers due directly to the operation of the orth American Navigation Company would amount to \$660,o; that due to clipper ship competition would total \$1,110,o; and that secured through a decline in railroad rates would \$1,248,000; or a total of \$3,018,000.88 Captain Merry, esident of the Navigation Company, declared when all was er that a saving of \$3,500,000 had been made on Pacific ast products shipped east during the life of the company, addition to the saving of perhaps \$1,500,000 on westbound eight.84

Undoubtedly the operations of the Navigation Company tensified the rate war started by the clipper ships, and the ductions in transcontinental charges were considerable. Acording to Mr. Leeds the cuts on eastbound transcontinent eight, all-rail, on representative articles, by January, 189 tere as follows:

³³ San Francisco Examiner, March 19, 1893.

¹⁴ Wheeler, "The Valley Road," sup. cit., pp. 32-33.

³⁵ San Francisco Examiner, January 10, 1894.

REDUCTIONS IN TRANSCONTINENTAL RAIL RATES TO JANUARY, 1894

Article	Old Rate per 100 pounds	New Rate per 100 pounds	Reduction per cent
Beans	\$1.10	\$.50	55
Canned goods	1.00	.50	50
Barley Dried fruits, raisins, and	.90	.30	6634
prunes (in boxes)	1.40	1.00	28
Wine	1.50	-371/2	80
Mustard seed	1.10	.30	73
Wool, in grease	1.50	.75	50
Wool, scoured	2.50	-75	70

Uncertain Benefit

On westbound freight it was estimated that the reduction amounted to at least 50 per cent. These estimates, however do not distinguish between the results produced by the Navigation Company and those which were the consequence of the operation of the clipper ships—perhaps no separate estimate possible or important. On the basis of the rates charged, the railroad admitted that it was losing money, at least so far a eastbound freight was concerned. It maintained, however that it continued to make a profit on its westbound freight are on its local traffic. There was no question that the steamship and the Panama Railroad lost money, although they declare stoutly that they would meet any cuts which the railroads might make. The steams of the railroads might make.

Whether the shippers benefited by the general demoralization in rates which occurred during the war is uncertain, as always is under such circumstances. They certainly lost the \$300,000 which they put into the North American Navigation Company, besides the guaranty fund subscribed by the Merican Navigation Company, besides the guaranty fund subscribed by the Merican Navigation Company, besides the guaranty fund subscribed by the Merican Navigation Company, besides the guaranty fund subscribed by the Merican Navigation Company, besides the guaranty fund subscribed by the Merican Navigation Company, besides the guaranty fund subscribed by the Merican Navigation Company, besides the guaranty fund subscribed by the Merican Navigation Company, besides the guaranty fund subscribed by the Merican Navigation Company, besides the guaranty fund subscribed by the Merican Navigation Company.

³⁶ San Francisco Examiner, September 21, 1893, statement by H. E. Huntington.
37 Ibid., April 25, 1893, statement by Agent Hinton of the Panama Railroad.

nts' Shipping Association. Moreover, they suffered from competition of eastern jobbers during the hostilities, a comition which the railroads encouraged by reducing the differess between carload and less than carload rates, by the exsion of the privilege of shipping in mixed carloads, and by fuction in westbound rates. On the other hand, they gained ectly through lower rates, and indirectly by the demonstrant hat, to some extent at least, their access to eastern markets a not subject to railroad control.

w Transcontinental Tariff

The North American Navigation Company operated only ittle over a year, as has been said. Its vessels, however, were cen over by the Panama Railroad, and competition continued til the end of the year 1895. Not long after that, it seems, gotiations between the shippers and the railroads began. presentatives of the transcontinental lines upon the coast re instructed to mollify Pacific Coast shippers so far as ssible, and the shippers in their turn seem to have been xious to meet this advance. In 1897 a communication was dressed to the railways by the jobbing interests upon the cific Coast, stating in substance that rates ought to be readsted in the interests of the coast jobbers; that more rigid pection rules should be enforced preventing their competitors the Middle West from obtaining fraudulent rates; and innating that if this was done they would not object to an vance in rates and would find it to their interest to place ipments largely with the railroads.

For the purpose of effecting some arrangement, a meeting representatives of the transcontinental lines was held at Del onte in the fall of that year. Representatives of the Pacific past jobbers and also of the jobbers of the Middle West were esent. Both parties were heard separately and much discussion was had but no definite conclusion reached. The confer-

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he final result was a new transcontinental tariff effective June 5, 1898, which seems to have given reasonable satisfaction til attacked by representatives of the intermountain towns.

¹⁸ Business Men's League of St. Louis v. Atchison, Topeka and Santa Fé Railread mpany, 9 I.C.C.R. 318 (1902).

CHAPTER XVIII

THE SAN FRANCISCO AND SAN JOAQUIN VALLEY RAILWAY

ttempt to Fix Maximum Rates

Properly considered, the construction of the San Francisco nd San Joaquin Valley Railway was the complement of the ampaign for the encouragement of water competition which ne Traffic Association waged between 1891 and 1897. The lans for the subsidizing of clipper ships and for the support f steamship service to and from Panama had from first to last ne grave defect—they afforded no means of distributing from an Francisco the products which dealers might succeed in aving brought in by sea. That is to say, while the consuming opulations of San Francisco, Sacramento, and Stockton might enefit by securing their goods at lower cost because of the ctivity of water competition, these cities could not extend their narkets unless the sum of the through rate from points of rigin to terminal city and from terminal city to local point hould be made lower than the direct rate from the Mississippi falley or the Atlantic Coast to the smaller towns in California, levada, and New Mexico.

Now the question of local rates differed from that of brough rates, in that it dealt with a matter over which the tate legislature and the State Railroad Commission appeared to have complete control. In 1892 the Traffic Association coordingly made a serious attempt to persuade the state legislature to undertake direct regulation of railroad rates in Calibraia, and to insert a provision for certain maximum rates the constitution of the state which should affect a considerable reduction in the rates then charged. This attempt failed,

STANTON LEARNES

CHAPTER XVIII

N FRANCISCO AND SAN JOAQUIN VALLEY RAILWAY

ix Maximum Rates

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s in Calinum rates a considerempt failed,

First Proposal for Competing Rai

The proposal that a competing ra San Francisco Bay to the interior fornia in 1893. On the contrary, in Stetson, of the Traffic Association, than nine propositions had been sub of the organization, looking to give line of railroad. These were success pared in earlier years. Most of the Stetson involved the construction of to a connection with the Santa Fé. contemplated construction from San Nevada Mountains to the termini o Rio Grande Western. At the time, that he was a merchant and had neitl to build roads, although he added tha desired more railroads and would u and at the proper time furnish sub one or more feasible railway projec Soon after this, possibly at the

steps were taken to investigate the

rancisco to Stockton, with an initial capital of \$2,000,000. This was the moment when the Traffic Association was vigorusly pushing its plans for the encouragement of water cometition, and when it was beginning the legislative campaign mentioned in a preceding paragraph. Little active support ould therefore be expected from the San Francisco shippers, although the executive committee of the Traffic Association authorized Mr. Leeds to give the projectors of the San Francisco and Great Salt Lake the benefit of his advice, and the California League of Progress formally indorsed the enterprise.²

The San Francisco and Great Salt Lake conducted extensive surveys and was said to have purchased a tract of land at Martinez for a terminal. The company was overtaken by the panic of 1893, however, before it had secured the financial support which was essential to its success. It suffered also from differences of opinion among its friends with respect to the policies to be pursued. Mr. Leeds insisted that to be a success the new road must have a through connection. Shippers, he said, would not patronize a purely local line when a through line was available, because a competitor with through facilities could afford them service which a local line could not.3 On the other hand, there were capitalists who expressed willingness to subscribe to the stock of a local system, but who would not put a cent into an overland line,4 and between the two parties the necessary subscriptions were not obtained. The project was finally withdrawn when the promoters failed to secure certain legislation which they thought necessary to make their plans a success.5

²San Francisco Bulletin. August 20, 23, 1892. The League of Progress was an organitation composed of the younger business men in San Francisco in sympathy with the policies of the Traffic Association.

¹San Francisco Bulletin, October 12, 1892.

⁴ San Francisco Examiner, December 23, 1892.

⁵ Ibid., March 8, 1893. See also ibid., March 4, 1893. With respect to the whole project Mr, Huntington said to a reporter:
"As to building a railroad to Salt Lake, I certainly have no objection to other people

Another Project

Following the failure of the San Francisco and Great Salt Lake enterprise, plans for railroad construction in California made no progress for several months. It had now become evident, however, that the state legislature was not disposed to pass a maximum rate enactment, and that any reduction in the level of local rates in California must come either from the good-will of the Southern Pacific or from the construction of competing lines. Under these circumstances, plans for railroad construction were revived, this time under the direct leadership of the Traffic Association of California.

Exactly when the Traffic Association took up the idea of promoting a competing railroad in the San Joaquin Valley cannot be stated with confidence. Newspaper reports indicate that the project was discussed at least as early as April, 1893. Whether or not a beginning was made in this month, it appears that by June, 1893, plans had progressed sufficiently to permit the publication of a prospectus, sent out with the approval of San Francisco shippers. This prospectus invited the citizens of San Francisco and of the state of California to subscribe to the capital stock of a railroad which should run from the city of Stockton to the head of the San Joaquin Valley, in Kem County, a distance of about 230 miles. The plan was said to be to secure as much money as possible in the city of San Francisco, and then to ask the people of the valley, from Stockton up, to add thereto a fair quota. Construction was to begin

doing it. I should very much dislike to do it myself. I do not believe it would be for the interest of San Francisco merchants to build it; hence I do not think it will be built. A goot railroad from San Francisco to Salt Lake, with good terminals, as good a road as the Central Pacific, would cost at least \$50,000,000. Of course, a road can be built for a much less sum, but such a road would not compete with the present line, for certainly the present rates are not as much as it would cost to haul the tonnage over a cheap line that could be built for much, if any, less than the figure named. When the Central Pacific Railroad was built urged the moneyed men of San Francisco to take an interest with us on exactly the same basis as I and my associates hold our interests. But no one here would take an interest. If they would not take an interest then when every man, woman, and child in the State wanted a road so that they could go East and see the old folks at home, they would bardly be likely to take it now, with at least seven lines across the continent, charging rates of fare and freight very, very much less than they were when the first road was built, or than they expected these rates would be when the first road was inaugurated." (Ibid., September 20, 1892.)

xpense and in reliance upon the effect of water competition on San Francisco Bay—a competition which was expected to maintain a low level of rates between Stockton and its larger neighbor. The cost of a good road from Stockton to Bakersfield was estimated at something less than \$20,000 per mile.

Appealing particularly to San Francisco, the promoters of the new enterprise declared that a competing railroad was essential to that city's prosperity. San Francisco amounted to mo more than any other collection of people unless it used its facilities as a seaport. Facilities unused might just as well not exist. It had been a part of the policy of all the transcontinental roads for many years to neutralize this seaport by all the means at their command, including the practice of maintaining excessively high local rates between the sea and the interior. This condition must be remedied. The prospectus also explained that the new line would benefit the producer and the consumer in the interior as well as in the city of San Francisco.⁶

Lack of Financial Support

Once the prospectus was out, the project for a local competing railroad was pushed with all the energy characteristic of Mr. Leeds and the Traffic Association. It received substantial support also from a portion of the San Francisco press. In order to test sentiment, a subcommittee of the executive committee of the Traffic Association started a canvass of the wealthy men of San Francisco, not to secure subscriptions, but to seek general assurances of co-operation. With one exception the citizens interviewed were reported to have promised to take stock in the road, and to have invited the committee to call again. Such an indication of unanimity was considered important. Not only did the moneyed men of San Francisco

⁶ San Francisco Bulletin, June 22, 1893.

⁷ Ibid., July 17, 1893.

terprise which might involve him, if it was to be successful, in an additional large and undetermined expense, on the penalty of losing his original subscription if the additional sums were not forthcoming.

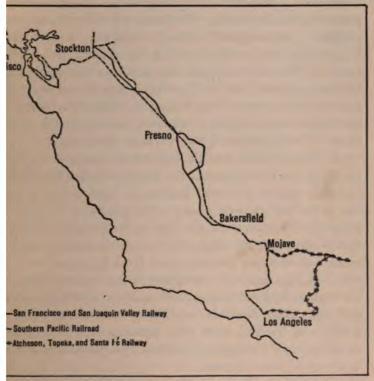
Final Success

We have now seen that two attempts to secure support for a new independent railroad in the San Joaquin Valley failed between June, 1893, and the end of 1894. The third stage in the progress of the Valley road began with a meeting called by the Traffic Association on January 22, 1895, for the purpose of interesting the realty owners of San Francisco in the construction of a railroad. By this time the Traffic Association's second campaign for subscriptions had failed as definitely as had its first. Only about one-half of the desired sum of \$350,000 was on hand. No more could be secured from the merchants of the city. There was little enthusiasm in San Francisco, and in the interior, cities like Fresno were becoming impatient and were turning to the south instead of to San Francisco for relief from the burden of high rates.¹¹

It was at this point and under these conditions that the management of the enterprise passed to new men and that a complete reorganization of its affairs occurred. In the main this change in control and in the policies of the projected Valley railroad was due to the energy of one man. Claus Spreckels, of San Francisco, the leading sugar refiner of the Pacific Coast, was not a member of the Traffic Association, and was not pledged to the support of the San Francisco and San Joaquin Valley Railway. He was, however, one of the speakers at the January meeting, and when the formal proceedings were over he came forward with an offer to subscribe \$50,000 provided that the minimum amount to be raised were increased from \$350,000 to \$3,000,000 or to \$5,000,000. On

¹¹ San Francisco Examiner, January 18, 1895.

ckel's motion, moreover, the chairman was authorized to int a committee of twelve from among the property owners he city to solicit subscriptions from holders of real estate. If the adoption of this motion the meeting adjourned.



showing the line of the San Francisco and San Joaquin Valley Railway, together with portions of the systems of the Southern Pacific and of the Atchison, Topeka and Santa Fé, 1898.

The subscriptions in definite amounts received on Tuesday, pary 22, 1895, did not much exceed \$20,000. The comee of twelve met, however, on January 24 and Claus eckels was elected chairman. Soon after this, larger pledges in to appear. Spreckels himself now subscribed \$500,000,

\$1,536,500, and on February 8 reached. This so encouraged the coresolved that the sum of \$4,000,000 tained from the city of San Francis the interior the competing line coul basis. To this end every effort was It is very evident that the substatels group and the reputation for succenjoyed, made a powerful impress and in the San Joaquin Valley. The prise was the same as before, but the At the same time the amount of me in the first instance was increased to ooo. 18 Large sums are sometimes for reasons both sentimental and principles.

a failure in his life, while with \$2, so unnecessary for anyone to fail the in the anticipated success.

this case. Claus Spreckels said hims

Campaign for Stock Subscriptions As we look back upon the circun aking enterprise, the ability of the new company to earn diviends was questionable. It was all very well to dwell upon the ertility of the San Joaquin Valley, and to point out the large roportion of the revenues of the Southern Pacific derived rom this source.14 Doubtless these conditions would count the long run. Yet the fact remained that the new road was ntering a not too highly developed territory already served by through line of large capacity. It was expected to reduce ates, and was likely to be compelled to reduce them; and it vas to do this while it was in the course of developing its own organization and establishing business relations with a new lientèle. Huntington said that he thought there was room in California for both the Southern Pacific and the new line. It required, he said, only a space of thirteen feet from the center of one track to the center of another, and there was lots of room in California. The projectors of the new road would have no trouble in finding room.15 But this remark was not meant to convey comfort to subscribers to the stock of the San Francisco and San Joaquin Valley Railway, and probably did not do so.

What, then, were the conditions of success for the new road? They were: first, such a popular support as would minimize the cost of construction and maximize its business; and second, such an alliance with some other large railroad system as would give stability and permanency to its traffic relations. If the new company possessed these advantages it would probably be able to live and to render a useful service in distributing products brought to California and to San Francisco by sea; without them it was not likely to survive.

It was in order to increase their popular support, and not lone for the sake of the money involved, that the promoters f the San Francisco and San Joaquin Valley Railway early

¹⁴ Statement of J. S. Leeds in the San Francisco Bulletin, October 1, 1894, and in the an Francisco Examiner, January 27, 1895.
¹⁵ San Francisco Examiner, March 6, 1895.

began a campaign for small subscriptions. Claus Spreckels took pains to say that while large subscriptions were all right and desirable, it would be the \$20,000, \$10,000, and \$5,000 stockholders who would control the property and its policy.16 In February, after the first arrangements had been made for reaching the larger business interests of the city, attention was paid to the offering of facilities for subscription to all classes of investors in San Francisco. Districts were mapped out and assigned to canvassers.17 The following month the San Francisco Examiner, which had taken a prominent part in the fight from the first, began to print subscription blanks in its daily issues. Arrangements were made by which persons might subscribe for fractions of shares by joining with their neighbors in share clubs. The Examiner offered a gold watch to the first person forming such a club, and when there was doubt as to priority, compromised by giving two watches. The formation of the first colored club was given special mention as was the decision of a colored club in San Francisco to make one paid-up share in the San Francisco and San Joaquin Valley Railway a tug-of-war prize to be competed for at its annual games. The winning team was to constitute a share club, and was to choose a trustee from among its members. 18

Appeal to Local Patriotism

While devices such as these were perfectly ineffective as a means for raising large sums of money, they did give the new road valuable advertising, and helped to predispose the whole community in its favor. For the same reasons that actuated the promoters in their attempt to gain the support of investors of small means, the San Francisco committee also made appeals to the public which rested upon moral and patri-

¹⁶ San Francisco Examiner, January 31, 1895. As a matter of fact, the bulk of the subscriptions came from a very few sources.

¹⁷ San Francisco Bulletin, March 1, 1895. 18 San Francisco Examiner, April 27, 1895.

c as well as upon financial grounds. Without going into this pect of the matter at length, it may be said that there has obably never been a commercial enterprise launched on the acific Coast so advertised, and praised, and predicted about as as the project of the San Joaquin Valley Railway. Participaon in the movement became a test of local patriotism. The alroad took the aspect not merely of a business expedient, to e considered solely from the point of view of monetary gain, ut it also became an expression of the hopes of expansion enertained by a generation of business men, strengthened by the ccumulated antagonism of years between the Southern Pacific tailroad and the shipping public.

Nor was this feature of the campaign confined to San Franisco alone. The main interest from first to last was of course n San Francisco. Yet the valley towns also showed sympathy with the new development, rising at times to excitement as onstruction became imminent, and questions of route had to e determined. Here, it is true, there was more business and ss sentiment. "What is the new road going to do for akland?" a man asked John D. Spreckels one day in the alace Hotel. "It is too early to put that question," reied Mr. Spreckels, "as it could only be answered by some eorist. The question is, What will Oakland do for the new ad?" 19

¹⁹ The question as to what the valley towns would do for the new enterprise was retedly asked, and received a reasonably satisfactory reply. Depot sites and rights-of-way to freely offered, and subscriptions to stock were talked about, if not often pledged in any ding way. The Spreckels group tried to encourage donations of all kinds, and to play town against another where this was possible. It refused to say, for example, whether new road would begin at Stockton, as once proposed, or even whether the new route ald not run through San José. Stockton organized a committee to present her claims.

1 José did the same. Mass meetings were held in both places, that in San José being rked by a procession, with transparencies and a band. Stockton merchants agreed to et othe San Francisco and San Joaquin Valley Railway rights-of-way 100 feet wide along adopted survey for the railroad from the city of Stockton through San Joaquin County the boundary line between San Joaquin and Stanislaus counties. They further agreed tonvey to the railway company certain specified parcels of land in the city of Stockton, to the company in obtaining franchises and rights-of-way in Stockton, and to obtain subspitions to the capital stock of the company to the amount of \$100,000. (San Francisco aminer, May 3, 1895.)

The San José delegation which came to San Francisco in March said that \$148,000 had eady been secured for the new road in their district, that \$200,000 was in sight, and that 50,000 in subscriptions could be obtained with a guaranty of shipments by the new route in the large fruit packers, business men, farmers, and horticulturists. They added

In spite of occasional skepticism, and here and there active opposition, the San Joaquin Valley received the new enterprise cordially. Among the Valley towns from which assurances of support were received may be mentioned Stockton, San José, Fresno, Madera, Modesto, Hanford, Merced, Visalia, Selma, and Bakersfield. Oakland also, though not properly in the Valley, manifested considerable interest in the work. Generally speaking, the directors of the San Francisco and San Joaquin Valley Railway asked local committees to select what in their judgment was the best route over which the railroad could pass. They then asked them to give rights-of-way, depot grounds, and terminal facilities, and to subscribe to all the stock that they could afford. It was announced that the railroad was being built on a business basis, and that it would go through the best country and where the greatest inducements were offered.20

This did not seem unreasonable to the local communities. and the company's requests were generally complied with. The principal reason for raising money under such an arrangement was to pay local property owners whose lands were taken for railroad purposes. There were no money subsidies, and no land grants except to the extent sufficient for the company's actual needs. Yet, of course, even so relatively moderate a provision of local aid materially reduced the cost of construction which the railroad company had to meet.

Purchase of Road by Santa Fé

Articles of association of the San Francisco and San Joaquin Valley Railway Company were filed at Sacramento in February, 1895, and construction was begun at Stockton

rights-of-way, 75 per cent of which would be free of cost to the company, and also terminal facilities in San José would be provided. (*Ibid.*, March 27, 1895.)

It is of some interest to recall that when the decision was made in favor of Stockton, her representatives had difficulty in making their promises good. It was remarked at one time that apparently one of the things most needed to help on the era of progress in California was a number of judiciously selected funerals—presumably of opponents to the new developments.

²⁰ See address of Robert Watt at Bakersfield, San Francisco Examiner, April 29, 1895

te in the same year. By the end of December, 26.1 iles had been built, carrying the railroad to the Stanislaus liver. During 1896 the track reached Fresno, and in 1897 sakersfield was attained. On June 30, 1898, the company eported a total mileage of 278.91 miles, including a branch to lisalia. It had at that time an authorized capital stock of 6,000,000, of which \$2,464,480 was issued and paid in, a unded debt of \$2,671,000, and current liabilities of \$110,928. The bonds outstanding were mortgage securities bearing 5 per ent interest and maturing in 1940. In 1897 the company reported gross earnings of \$209,133 (of which \$178,494 were from freight), and operating expenses of \$153,102, on an average operated mileage of 123.44 miles. For the year ending June 30, 1898, the earnings were \$411,179 and the operating expenses \$282,326, on a mileage, however, which was considerably greater. These were the only years for which statistics are available, for the company was purchased by the Santa Fé in December, 1898.

The circumstance that the San Francisco and San Joaquin Valley Railway was purchased by the Atchison, Topeka and Santa Fé only a few months after the company had completed ts road to Bakersfield, served as a dramatic illustration of he fact that alliance with some larger railroad system was onsidered by its promoters to be essential to the road's success. There is no question but that this sale of the system came as shock and a disappointment to many persons whose enhusiasm had been aroused by the proposal to build an indeendent railroad for the service of shippers in San Francisco nd in the San Joaquin Valley. The high hopes of San Franisco merchants could scarcely be satisfied by anything short f a system permanently under the control of the commercial nterests of that city. When the San Francisco press declared hat San Francisco was preparing to reach out for the trade f all the western part of the American continent, and when the Spreckels committee declared that the new road was to a people's road, owned by the people, and operated in the interests of the hands of the original subscribers to the stock or in the hands of other people sons of like character. Nor was the argument that the construction of the San Francisco and San Joaquin Valley Rail way would prevent the diversion of eastern freight from Sal Francisco to distributing centers of the South, are easily to be reconciled with the sale of the railroad to a company which like the Santa Fé, had a terminus in Los Angeles.

Spreckels Interests

There were, on the other hand, indications from the beginning that the Spreckels group did not intend to commit in self to the permanent management of a railroad system, be that they regarded connection with, and perhaps amalgametion between, the San Francisco and San Joaquin Valley and the Atchison, Topeka and Santa Fé as the natural culmination of the former road's career. Like Stanford, Mark Hopkins, Huntington, and Crocker, Claus Spreckels, his sons. and the persons most intimately associated with them were not original nally railroad men, and were not, when they began railroad construction, particularly interested in the railroad business a business. They were therefore to be tempted to continue railroad management only by a chance for extraordinary profits —a chance which the San Francisco and San Joaquin Valley Railway did not offer. Looking at the matter from a business standpoint, it is not unreasonable to suppose that they saw that the best opportunity for withdrawing their capital from the valley speculation lay in negotiations with the Santa Fe Of course this is surmise, and perhaps is mainly plausible 252

²¹ San Francisco Examiner, January 30, 1895.
²² Letter from the Spreckels' Committee to San Francisco Bankers, San Francisco Ban Francisco Bankers, San Francisco Bankers, San Francisco Bankers

the interpretation of happenings which we know took place, that it has a certain reasonableness in view of all the facts.

The concrete evidence that combination between the San Fancisco and San Joaquin Valley and the Atchison, Topeka d Santa Fé was looked upon as a possibility from the first, to be found in the provisions of the trust agreement entered by subscribers to the San Francisco and San Joaquin ley Railway stock, and in the negotiations between that raild and the city of San Francisco and the state government of ifornia, over what was known as the China Basin lease.

st Agreement

Soon after the promoters of the San Francisco and San quin Valley Railway had successfully organized their coration, subscribers to the stock of the company were asked nter into a certain trust agreement or pooling plan designed narily to prevent the railroad from falling into the hands the Southern Pacific. Briefly summarized, this plan complated the transfer of the stock of the company to seven ter nine) trustees. Individual stockholders so transferring ir holdings were to receive trust certificates clothing them has the powers and privileges usual in such cases. The trussion their part were to administer the railway for a period ten years unless three-quarters of the certificate holders all drequest an earlier termination of the trust, or unless all he subscribers should die.

This administration was, however, subject to restrictions. which two deserve special notice. In the first place, tees undertook to operate the railroad, when compluch a basis that the rates and fares charged should best rates and fares which would yield enough earning costs of operation, interest, and sinking fund tes, and to pay a dividend not exceeding 6 per tal stock paid in. This clause was eviden

reassure shippers who had been or might become intereste the new railroad. But besides this, the trustees agreed they would not knowingly vote said stock "for the benefi in the interest of any person or corporation or interest ho to the interest of, or in business competition with the Francisco and San Joaquin Valley Railway Company, or or to or in favor of any party or parties or company or c panies owning or controlling any parallel line of road to detriment and injury of the corporation hereinbefore n tioned." ²⁸

To this clause there was later added another of the s import, to the effect that the San Francisco and San Joac Valley Railway should not be leased to, or consolidated w any company which might own, control, manage, or ope any of the roads then existing in the San Joaquin Valley, that neither the trustees nor their successors should have power as stockholders to assent to any such consolidation lease, or in any way to put the San Francisco and Joaquin Valley Railway under the same management as of any other railroad then existing in the San Joac Valley.²⁴

In so carefully worded a document as the trust agreen here under consideration, the prohibition of combination v competing railroads or with railroads then existing in the Joaquin Valley had the force of an affirmative permission the trustees to consolidate their property with that belong to any company not in the prohibited class. As a pract matter this meant consolidation with the Santa Fé and v that railroad only, for the reason that there was no other tem with which combination would have been significant. It trust agreement was approved at a meeting of stockhold held on April 5, 1895,²⁵ and by the middle of the follow

34 Ibid., April 6, 1895

²³ San Francisco Examiner, March 26, 1895.

²⁵ San Francisco Bulletin, April 6, 1895.

month holders of more than three-fourths of the stock had given written assent to the trust conditions.

The fair inference from the terms of the trust agreement is that the promoters looked upon the union of the San Francisco and San Joaquin Railway and the Atchison, Topeka and Santa Fé as a proper and likely outcome of the construction of the former road. This same conclusion is strengthened by consideration of the China Basin lease, concerning which a few words may be said.

The China Basin Lease

The China Basin lease related to a tract of land on the water-front between the foot of Third Street and the foot of Fourth Street in San Francisco. The San Francisco and San Joaquin Valley Railway needed a terminus in San Francisco even before it entered upon construction west of Stockton, because it wished to encourage the shipment of freight from San Francisco up the Sacramento River to the head of its rail line at Stockton. It also looked forward to the day when it should have a railroad of its own to Oakland or to some other point on San Francisco Bay, possibly to the city of San Francisco itself.

According to the precedent set in the southern counties, the San Francisco and San Joaquin Valley should have applied to the city and county of San Francisco for terminal privileges. The piece of property which it desired, however, consisted of certain mud flats at China Basin, control over which had been specifically vested in the State Board of Harbor Commissioners by a law passed in 1878.²⁶ Not only were the flats in question thus removed from the control of the city, but the State Board of Harbor Commissioners itself had apparently no authority to conclude binding leases of this area covering a substantial period of time, although it did have power to

^{*}Laws of California, 1878, Ch. 219.

grant temporary permits for the use of water-front property. Before any progress could be made, therefore, it was necessary to apply to the state legislature in order that the powers of the harbor commissioners might be enlarged, after which negotiations could be continued with the commissioners direct.

As a first step toward obtaining a lease of the China Basin tract, Claus Spreckels went to Sacramento in March, 1895, accompanied by other directors of the San Francisco and San Joaquin Valley Railway. With characteristic emphasis he declared to members of the legislature that if the promoters of the new enterprise did not get the mud flats they might as well give up the road.27 No senator, he said, who voted against his bill could dare to face his constituents again. Senators who voted against the proposed amendment to the law voted to take the bread out of the mouth of the workingman's child. They voted to keep the unemployed out of work, and they voted for their own damnation.28

Necessary Legislation Enacted

There was little opposition in the assembly to giving the Spreckels group what it wanted. Principally the discussion was as to whether it was better to clothe the harbor commissioners in general terms with the power to lease water-front property.29 or whether the board should be authorized only to lease a described parcel to a specified group of persons.10 The fear was expressed in the course of the debate lest the tract desired by the San Francisco and San Joaquin Valley Railway might be leased to a corporation controlled by the Southern Pacific, and that other parcels might go the same way. On the other hand, it was pointed out that a provision for a lease

²⁷ San Francisco Examiner, March 9, 1895.

¹⁸ Ibid., March 11, 1895.

²⁹ This was the proposal of Mr. Powers, of San Francisco. See Journal of the Assembly. 31st Session, March 8, 1895, p. 904. 3º Reid amendment, Journal of the Assembly, 31st Session, March 11, pp. 961-62

to specified parties might prove unconstitutional as an example of special legislation.

In the end the "Gleaves" bill with the so-called "Powers" amendment passed the assembly by a vote of 60 to 9, and the senate by a narrower margin of 21 to 17. In its final form it authorized the State Board of Harbor Commissioners to lease any land belonging to the state which was required for terminal purposes, at a maximum rental of \$1,000 a year. No land was to be leased for a longer period than fifty years, not more than 50 acres was to be leased to any one railroad, and no lease was to be assignable without the written consent of the commissioners. As a still further protection, it was provided that the beneficiary of the lease must be a railroad company. Such a company, moreover, must be incorporated within the state of California, and it might not be a corporation which, at the date of the passage of the act, had any terminal facilities in the city and county of San Francisco. 31

Terms of Lease

Armed with the legislative sanction, Mr. Spreckels undertook negotiations with the Board of Harbor Commissioners and with Mayor Sutro, of San Francisco, and Governor Budd, which lasted from the middle of March, 1895, to the second week in July. In its main outlines the lease finally agreed upon offered to the San Francisco and San Joaquin Valley Railway Company the use of a defined area of 241/4 acres more or less located near the foot of Fourth Street, San Francisco, and bounded upon the water side by the sea-wall and thoroughfare established by the legislature of 1878. In return for this considerable grant, the lessee agreed to reclaim the lands granted from the tide, to place tracks, warehouses, and freight sheds upon them; to pay a nominal rental of \$1,000 a year; and in addition, to commence within six months, and to construct an

³¹ Laws of California, 1895, Ch. 171.

Pacific Company might obtain control of the stock of the road that we decided to talk with our stockholders and we laid the whole matter before them and told them not to sell their stock at less than par and then the option was taken upon the stock and it will undoubtedly be closed.85

This statement of Mr. Watts bears out the conclusion at which we had already arrived, namely, that the promoters of the Valley road appreciated from the first that they must connect their enterprise with some larger system in order to be permanently successful. At the same time the prominent mention of the Santa Fé Railroad in the statement, a railroad system which had neither rails in the San Joaquin Valley nor termini on San Francisco Bay, suggests why the promoters were willing to accept the restrictions imposed by the trust agreement of 1895 and by the China Basin lease.

Transfer of Control

In the fall of 1898, the directors of the San Francisco and San Joaquin Valley Railway requested the holders of trust

³³ San Francisco Examiner, October 27, 1898. Another point of view with respect to the consolidation of the San Francisco and San Joaquin Valley Railway with the Sants F6 is presented by W. B. Storey, chief engineer and general superintendent of the Sants In increased in the Sants F6. Mr. Storey writes:

"My views do not coincide with yours in regard to the reasons actuating the promotes of the railroad. Popular opinion in California believed that the domination of one railroad greatly retarded the progress of the state and it was the feeling that the prosperity of the state would be very greatly increased if competition could be provided. As a possible measure of obtaining such competition resort was made to water competition and a steamship lize was organized to handle freight via the Isthmus. This line was maintained until the mose raised had been absorbed and it had been practically demonstrated that such a line could not pay. The public was, therefore, eager for any other competition that might present itself. It was the thought of the projectors that a local line should be built which might ultimately, if opportunity offered, become part of a transcontinental line. The Santa Pahowever, was not in a position to do anything, as it was at that time in a Receiver's hands It was, however, the nearest railroad and it, therefore, seemed wise in projecting a new road branching from San Francisco to so locate it that it could later become part of the Santa Pahowever, was not in a position to do anything, as it was at that time in a Receiver's hands It was, however, the nearest railroad and it, therefore, seemed wise in projecting a new road branching from San Francisco to so locate it that it could later become part of the Santa Pahowever, was not in a position to do anything, as it was at that time in a Receiver's hands It was however, the nearest railroad and it, therefore, seemed wise in projecting a new road branching from San Francisco to so locate it that it could later become part of the Santa Pahowever, wa

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es to Stockton. This in itself represented ents under the Southern Pacific rates, inasern Pacific had been accustomed to quote a sco which was \$1 per ton higher than the in order to encourage shipments to Port ern Pacific rate to Port Costa, exceeded its only 50 cents, and was less than the Southte to San Francisco by the same amount.44 s in the case of merchandise southbound ass the rate from San Francisco to valley per hundred pounds higher than the rate n second-class the differential was 3 cents, fourth classes it was 2 cents per hundred and supplies for country stores generally three, and four. These figures compared ific differentials of 5 cents on classes one ts on classes three and four.45 Here again n of San Francisco was improved, not unisfaction of dealers in that city.

n the facts set forth in the last few pages cisco and San Joaquin Valley Railway aciderable reduction in rates, at least for a raquin Valley. When we bear in mind that ipal purpose for which the road was built, I that after all its promoters escaped withnancial sacrifice, it is hard to avoid the concerprise was justified, and may be considered 1 what it cost. The company did not fulfil projectors; it failed to maintain its inde-

ossible its low San Francisco rate, the San Francisco and San included an arrangement with the California Navigation and which the latter agreed to run two steamers a day cach way be incisco, and to handle all wheat shipments to Port Costa, Benies which were delivered to it by the Valley road. The same ckton to all the points named. (San Francisco Example)

tinued by the Santa Fé, and the road was opened for freight and passengers, respectively, in May and July, 1900. There was talk also of building across the 68-mile gap between Mojave and Bakersfield. Eventually, however, an amicable arrangement with the Southern Pacific was concluded in this territory under which the use of the Southern Pacific line across the mountains was thrown open to both companies. This finally admitted the Santa Fé to northern California.

Reduction of Grain Shipment Rates

Did the building of the San Francisco and San Joaquin Valley Railway justify itself? From the financial point of view the answer is clearly in the negative. To say nothing of the energy spent in its development, investors in the stock of the railroad received no dividends. They therefore lost the use of the capital which they contributed for a period of three years. The principal of their investment they did, indeed, recover, but the interest upon it was gone. On the other hand, the enterprise was never regarded as likely to be a moneymaking affair in the narrow sense, and the financial point of view was not the chief one to be regarded. The real benefit expected from the construction of the Valley road was that which would come from a reduction in transportation charges between San Francisco and points in the San Joaquin Valley, and the success of the project was therefore to be measured primarily by the cuts in railroad rates for which it might be held responsible. We may consider the problem a moment from this point of view.

The first reduction in rates which may be attributed to the Valley road occurred in June, 1896, when the new railroad published a schedule of charges on wheat and on burlap bags to Stockton from stations upon its line south of the last-named city. This schedule showed substantial reductions. On September 15, 1895, the Southern Pacific rate from Ripon, a town

20 miles distant from Stockton, to Stockton was 95 cents per ton of 2,000 pounds. The Valley road in 1896 filed a rate of 80 cents a ton from Escalon, 21 miles distant from Stockton upon its own line. The Southern Pacific rate for the 29 miles from Modesto to Stockton was \$1.35 a ton. From Empire, the nearest station to Modesto upon the San Francisco and San Joaquin Valley, the new railroad put in a rate of \$1.10. The rate from Merced was \$1.85 over the Southern Pacific; it was now made \$1.70 by the Valley road. In addition to these reductions in the rates to Stockton, the new company afforded shippers a sensible relief by abolishing the switching charge of 15 cents per ton which the Southern Pacific had been accustomed to demand on grain handled at that point.³⁶

As the Valley road extended itself to the south and added new stations at which it was prepared to receive business, the policy of rate-cutting was continued. In September, 1896, a wheat rate of \$2.15 per ton was established from Fresno to Stockton, 20 cents less than the Southern Pacific charge.⁸⁷ By 1898 the line had reached Bakersfield, and grain rates were put in from towns between Hanford and that city which were from 10 to 15 cents per ton less than the rates which the Southern Pacific was accustomed to exact.⁸⁸ All the rates quoted were met by the Southern Pacific; moreover, word was sent to Mr. Moss, traffic manager of the San Francisco and San Joaquin Valley, that the Southern Pacific would continue to meet reductions as fast as they were made.

Merchandise Tariff

The first merchandise tariff to be established by the new line was somewhat slower in appearing than the tariff on g because the formulation of it was a more complicated m Nevertheless, such a tariff was filed with the State Raii

¹⁶ Biennial Report of the Board of Railroad Commissioners of the State of Cali for the years 1895 and 1896. ¹⁷ San Francisco Examiner, September 19, 1896.

¹⁸ Ibid., June 28, 1898

Commission on August 22, 1896. The new merchandise rates were based upon the Western classification, and were believed to represent reductions of from 10 to 50 per cent as compared with Southern Pacific rates before the competition of the Valley road had become effective. In the new schedule the first-class rate from Stockton to Merced was 31 cents per hundred pounds, or approximately .9 cents per ton per mile. On class five, the highest carload class, the rate was \$4 per ton, or .6 cents per ton per mile.³⁹ As in the case of the grain rates, the publication of new merchandise schedules continued as the Valley road proceeded south. Thus when the company reached Bakersfield it put in a first-class rate of 83 cents per hundred pounds, a cut of 19 cents under the Southern Pacific tariff, with rates on other classes reduced to correspond.⁴⁰

In addition to grain and merchandise rates, the Valley road also quoted commodity rates. The rate on flour from Merced to San Francisco was set at \$2.75 per ton, and that on potatoes and on lime at \$1.85 per ton, as compared with rates of \$4.20 and \$3.10 over Southern Pacific lines. Likewise passengers were carried from Stockton to Fresno and to intermediate points at a flat rate of 3 cents per mile. Later, the fare from San Francisco to Hanford was reduced from \$7.30 to \$4.65, that to Visalia from \$7.40 to \$5,42 and that to Bakersfield from \$9.10 to \$6.90.43

Relative Position of San Francisco Improved

It should be added that the adjustment both of grain and of merchandise rates was such as to improve the relative position of San Francisco as compared with other cities, as well as to reduce directly the freight bills which she had to pay. Generally speaking, the grain rates between points in the San Joaquin Valley and San Francisco were made 50 cents per ton

San Francisco Examiner, August 23, 1896.
 Ibid., July 18, 1896.
 Ibid., September 15, 1897.
 Ibid., June 4, 1898.

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CHAPTER XIX

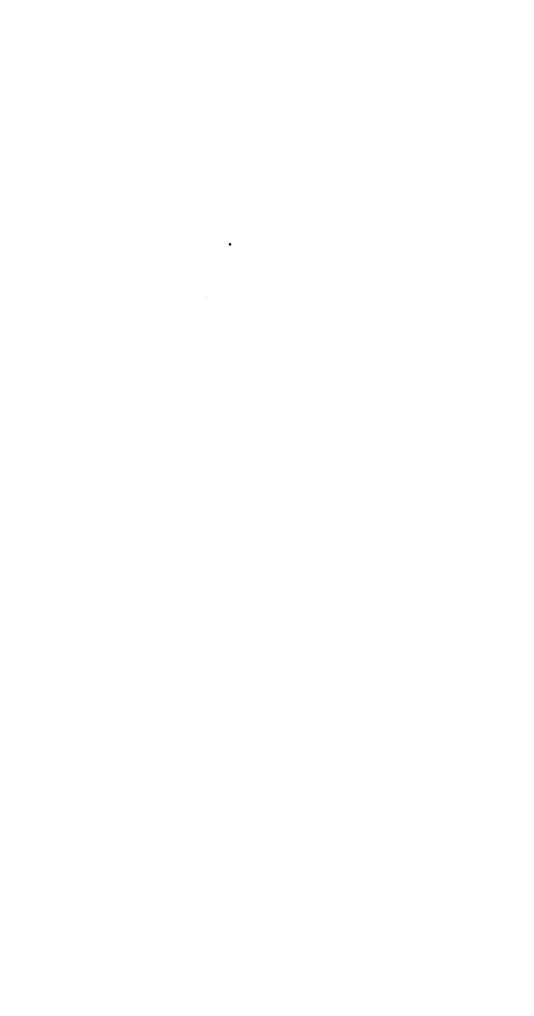
CHARACTERISTICS OF THE HERN PACIFIC LINES

sed Properties

the general questions of rates and coma, and return again to the more intimate Pacific development, and particularly to years. The present chapter describes the berating characteristics of the Southern 1885; the chapters next following take up nancial problem which faced the Central ineties—the repayment of the government

nnual report of the Huntington lines shows of view of ownership the system, as early d into two parts. The first of these was ietary companies," and included the Southof California, the Southern Pacific Railoud of Arizona, and Texas Railroad and Steamship Comand Western Railroad, the Texas and oad, the Galveston, Harrisburg and San d the Northern Railway. The second was d companies," and its principal components seific Railroad, the California Pacific Railroad California Railroad.

etween leased and proprietary lines was not ations between the two groups and the mpany, for as a matter of fact all were regard, but in the circumstance that the



The early practice of the Southern Pacific did not, however, against accord with this counsel of moderation, and the pany seems not only to have been very active, but actually have succeeded in capturing as much as 90 per cent of the York-San Francisco business; also, while it did not manently retain so large a share of the through freight in moved by rail, it continued to carry the major portion of restbound traffic from the Atlantic seaboard to California perhaps the year 1887. Some of the freight which the tem Pacific handled during this period was new business, a considerable portion of it was taken from the Central

There is more or less evidence that it was the practice of Southern Pacific management to lay special emphasis upon advantages of the southern route, in the attempt to divert auch business as possible to what was known as a 100 per That shippers believed such a policy was being wed, is evident from statements which appeared in the It was currently asserted, for instance, that and traveling agents of the Southern Pacific all over the of California were instructed to use their best endeavors induce passengers to move by way of the southern line ind of by way of Ogden.6 It was claimed that better time made over the Southern Pacific than over the Central **Effic.** and that freight shipments were more easily traced. Speaking of westbound freight, a San Francisco merchant quoted in 1896 as stating that the Southern Pacific wered freight from New York to San Francisco in from we to twenty days. Should the freight not come to hand

ds were pushed forward as rapidly as possible.

Emptly, officials of the company were said to be exceedingly Eful to discover the causes of the delay and to see that the

United States v. Southern Pacific, p. 155, testimony of Schumacher; p. 942, testimony ambers; pp. 1028-29, testimony of Spence.

Sen Francisco Examiner, October 24, 1895.

proprietary and leased lines was naturally so because, as has been swere operated after the same gener classed as proprietary or leased conlines were divided for operating paystem including the mileage sout. Oregon, and west of Ogden and Fitem, including the railroads east legislation compelled the separat Texas. In 1896 there were 4,96 Pacific system, 1,967 miles in Louisiana. Mention should also of water routes, chiefly those components.

Bigness of System

The fact concerning Southern to have most impressed observe company controlling 7,300 miles of water lines, and operating betw and New York, was unusually la The early practice of the Southern Pacific did not, however, where accord with this counsel of moderation, and the pany seems not only to have been very active, but actually we succeeded in capturing as much as 90 per cent of the York-San Francisco business; also, while it did not mently retain so large a share of the through freight throwed by rail, it continued to carry the major portion of vestbound traffic from the Atlantic seaboard to California perhaps the year 1887. Some of the freight which the term Pacific handled during this period was new business, a considerable portion of it was taken from the Central

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Umited States v. Southern Pacific. p. 155, testimony of Schumacher; p. 942, testimony mbers; pp. 1028-29, testimony of Spence.

Sen Francisco Examiner, October 24, 1895.

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transported over the Chicago, Milwaukee and road consisted of products of agriculture are we can understand the unusual position in what Pacific was placed.²

High Average Earnings

Generally speaking, on a railroad system large traffic in manufactured goods, the av ton per mile will be large. This is particular the company's coal tonnage is of small proporti of the Southern Pacific, the effect of such a business was increased by the fact that the comthe well-nigh exclusive control of a large local ! Pacific Coast, on which high rates could be charwhere the efforts of the associates to maintain rail transportation in California bore fruit. cent in weight of the commercial freight hand the Central Pacific Railroad was classified as loc two-thirds of this company's earnings were derive business. Indeed, the local freight during the operation exceeded expectations as much as the thr fell behind what was thought would be its probable Prior to the construction of the Union Pacific railroads, it was supposed that for many, through business of the new lines would constitute by principal source of revenue. It was also supposed traffic of the companies would consist very largely in portation across the continent of the products of Asia to the states situated east of the Mississippi Riv Europe. Both of these anticipations proved entirely

Partly, then, because of the character of the frei it handled, and partly because of the fact that a lar

² In later years the lumber business of the Southern Pacific developes business has always remained small.

The early practice of the Southern Pacific did not, however, ther accord with this counsel of moderation, and the my seems not only to have been very active, but actually se succeeded in capturing as much as 90 per cent of the York-San Francisco business; also, while it did not mently retain so large a share of the through freight moved by rail, it continued to carry the major portion of estbound traffic from the Atlantic seaboard to California perhaps the year 1887.5 Some of the freight which the m Pacific handled during this period was new business, musiderable portion of it was taken from the Central

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Vaited States v. Southern Pacific, p. 155, testimony of Schumacher; p. 942, testimony babers; pp. 1028-29, testimony of Spence.

See Francisco Examiner, October 24, 1895.

other hand, if freight came via Chicago and Ogden, all the way from 18 to 28 days might be spent upon the journey, while information as to the causes of delay was difficult to obtain.

Testimony of Employees and Officials

One may readily concede that complaints of the character referred to are to be accepted only with reservations; yet there is later information which bears out the substance of the charges in convincing fashion. When the Southern Pacific system was attacked in 1914 as a combination in restraint of trade, a great many railroad employees were put upon the stand, and testimony was secured which related not only to current policy, but also to practices which had been followed by members of the Southern Pacific staff for a number of years in the past.

It appears without substantial contradiction from the testimony in this case, that Southern Pacific, and even Central Pacific employees, solicited for the Sunset route before its combination with the Union Pacific in preference to the route via Ogden in order to obtain the long haul, even when the Sunset route was very roundabout. Mr. Connor, commercial agent of the Southern Pacific at Cincinnati from 1889 to 1901, testified that his office had directed its exclusive time and attention to securing traffic from California points for the New Orleans gateway. Shipments moving via Ogden he regarded as lost and reported them accordingly. Mr. Sprouk said that the same was true of the whole Central Freight Association territory, from Buffalo and Pittsburgh on the east, to Chicago and St. Louis on the west.

Mr. Spence, director of traffic of the Southern Pacific Company, admitted that effort was made to send business to

⁷ San Francisco Examiner, February 25, 1896.

United States v. Southern Pacific, pp. 328, 338, testimony of Connor.

⁹ Ibid., p. 199, testimony of Sproule.

ten were reported as amounting to 335,330,035, while the westbound freight amounted to only 232,682,578.

Instant light loads and empty mileage on the westbound it. The difference would doubtless have been greater had it been for the large westward moving company freight. It is tendency called for constant effort on the part of the is of the Southern Pacific to secure eastern manufactures westbound transportation, and this effort in turn gave rise intion between the railroad and the manufacturing interests the Pacific Coast.

in the other hand, the tendency of the passenger traffic in the direction of an excess of westbound business, because the migration of permanent settlers to California. During three years from 1888 to 1890, 328,892 through passengers reported as moving westward on the Pacific system to an excess of the tendency of the West. The excess of westbound tenger traffic during these three years reached the large of 76,580,470 passengers, or more than the total east-tend movement in any one year of the period.

mings Density

The greatest density of earnings on the Southern Pacific mem was on properties such as the Central Pacific and the affornia Pacific, which together with the Northern Railway med the main trunk line from San Francisco to the East. 1895 the Central Pacific earned \$9,537 per mile and the affornia Pacific \$9,266, amounts which were far inferior the results of the operation of railroads in thickly settled stricts east of the Mississippi River, but which yet exceeded returns on the Santa Fé, the Illinois Central, and even those norted on the western portions of such a railroad as the timore and Ohio.

Next to the California Pacific in the Southern Pacific sys-

during these years, nor did they occur at exactly the same times, but the figures seem to offer no support to the charge that the prosperity of either company was being sacrificed.

It may also be observed that the policy of freight diversion was not confined to the period when the Central Pacific was negotiating with the government for the payment of its debt and with the English stockholders for the adjustment of their claims, nor to the years when the management of the Southern Pacific Company owned Southern Pacific shares and did not own a corresponding amount of the shares of the Central Pacific. In fact, as has been said, the policy of seeking to obtain the benefits of the long haul is still followed by the Southern Pacific Company, and its agents still take credit for sending freight all the way to New York by company lines, although the financial control of both the Southern and the Central Pacific has long been in one set of hands.

Traffic in Early Eighties

Like other systems in the United States, the earnings of the Southern and Central Pacific railroads fluctuated considerably from year to year. It has been pointed out in a previous chapter that during the period from 1870 to 1879 the rapid extension of the Southern Pacific in the South West, and the temporarily unproductive character of the new mileage built, well-nigh caused the bankruptcy of the entire concern. The associates were then saved by the completion of the Southern Pacific main line to The Needles, and by an improvement in general stock market conditions which enabled them to sell securities in New York. In 1885 the Central Pacific retired the greater part of a floating debt of \$12,873,946 by an issue of bonds, and for the first time in many years was freed from what had always been a pressing danger.

In spite of this important relief, the years 1882, 1883, 1884 and 1885 were still years of considerable difficulty. Although

the mileage of the system now increased but slowly, the revenue per mile declined. Thus the Central Pacific earned \$9,449 per mile of line in 1881, \$8,437 in 1882, \$8,253 in 1883, and \$7,496 in 1884. In three years gross earnings per mile dropped 21 per cent. This decline was due to a number of causes. The Central Pacific suffered greatly, for one thing, from the falling off in the tonnage supplied by the Nevada mines. Roads like the Eureka and Palisade, the Nevada Central, the Nevada and California, and the Virginia and Truckee railroads, which were at one time lucrative feeders to the Central Pacific main line, all showed a considerable decline in earnings and business between 1875 and 1885 because of the failure of the mines. The freight received at Palisade, the terminus of the Eureka and Palisade Railroad, declined 74 per cent between 1875 and 1888. The freight received at Battle Mountain, the terminus of the Nevada Central, fell off 78 per cent, while that arriving at Virginia City over the Virginia and Truckee Railroad dropped 86 per cent.

It was estimated that the shrinkage of traffic between 1876 and 1885 was not less than \$2,000,000 per annum as compared with the period of highest prosperity of the Nevada country. The decrease was due in the first instance to the working out of the ore deposits, not only of the Comstock lode but of nearly all other camps within the states of Nevada and Utah west of Ogden which were tributary to the Central Pacific line. Following this, there was a large falling off in traffic, consisting of mining machinery and all kinds of supplies previously required by the miners at the mining camps, and also a large falling off in passenger travel as compared with the first and prosperous years of operation.¹⁶

Besides the loss of the Nevada mining traffic in the late seventies and early eighties, the Central Pacific also had to

¹⁶ Frye-Davis Report (51st Congress, 1st Session, February 17, 1890, Senate Report No. 293, Serial No. 2703).

It was scarcely to be expected that the relatively new system of the Southern Pacific would not suffer with the rest. The figures seem to show, however, that the Huntington line suffered more than most eastern railroads from the depression in business following the panic of 1893. While it is true that the portion of the roads operated by the Southern Pacific Company which was known as the Atlantic system, comprising the lines east of El Paso, escaped with a decline of earnings from \$7,700 per mile to \$7,400, or only 43 per cent, the Pacific system, including the Central Pacific and the Southern Pacific Railroad of California, witnessed a decline in its returns from \$8,000 per mile in 1891 to \$6,400 per mile in 1897, or a loss of from five to six times as much in grow, and a still greater relative decline in net, receipts.

The following table shows the earnings and expenses of the Central Pacific Railroad per mile of road from 1885 to the reorganization of the company in 1898:

OPERATING RECEIPTS AND EXPENSES OF THE CENTRAL PACIFIC RAILROAD OF CALIFORNIA, 1885-98 PER MILE OF ROAD

Year	. Gross Earnings	Operating Expenses	Net Earnings
1885	\$ 8,383.26	\$3,712.93	\$4,670.33
1886	9,135.18	4,445.62	4,689.56
1887	10,092.27	5,394.48	4,697.79
1888	11,641.24	7,079.38	4,561.86
1889	11,416.92	7,178.13	4,238.79
1890	11,715.97	7,259.55	4,456.42
1891	12,224.76	6,771.95	5,452.81
1892	10,745.16	6,548.29	4,196.87
1893	10,488.89	6,267.71	4,221.18
1894	9,578.18	6,008.06	3,570.12
1895	9,534.31	5,990.94	3,543.37
1896	9,159.68	5,706.59	3,453.09
1897	4,270.75*	2,715.62*	1,555.13*
1898	11,595.87	6,769.00	4,826.87
			- 1

Six months only.

nese figures show very clearly that the gross receipts of gden route increased on the average per mile of road from to 1891, but that they fell off largely and persistently 1891 to 1897. Indeed, the net earnings per mile each year 1894 to 1897 inclusive, were less than those for any of ine preceding years.

ension of Central Pacific Dividends

seems very likely that this unusual falling off in the ts of the Central Pacific Railroad Company is to be ated with the exceptionally disturbed traffic conditions e Pacific Coast during the four or five years beginning latter part of 1891. These were the years when the c Association of California was conducting its violent upon the Huntington interests. The period was also ed by the dissolution of the Transcontinental Association, y the construction of the San Francisco and San Joaquin y Railroad. It was not to be expected that a campaign as has been described in previous chapters would fail ve an influence upon the receipts of a company interested siness in, to, and from the state of California, so that a oportionate decrease in Central Pacific earnings was not ising. However this may be, the effect of the decline in ngs was to force the Central Pacific to stop the payment vidends; and the cessation of dividends, together with elements of uncertainty in the situation to which referwill be made, eventually caused the price of Central Pacific of Southern Pacific stock to decline.17

The dividends declared by the Central Pacific Railroad Company from 1861 to 1898 follows:

Month	Per Cent	Amount
September	3	\$1,628,265
August	5	2.713.775
April	4	2,171,020
October	6	3,256,530
April	4	2,171,020
October	4	2,171,020
	4	2,171,020
October	4	2,171,020
	September August April October April	September 3 August 5 April 4 October 4 October 4 April 4 October April A

Dividend Policy

In respect to dividends a word should be said here, enough at least to make clear that the whole dividend policy of the Central Pacific was a matter which provoked criticism, and that this criticism grew acute at the close of the period we are discussing. As a general matter it was charged that the Central Pacific had no business to pay any dividends at all while its indebtedness to the United States government remained uncanceled. It was further alleged, with more show of reason, that the dividends of the eighties were declared in order to assist the associates in disposing of Central Pacific stock in Europe, and not because there existed any surplus to which they could be properly and wisely charged. Finally, enemies of the company asserted, and showed ground for believing, that the dividends set forth in the annual reports of the Central Pacific to its stockholders did not represent all dividends actually declared; they asserted that, in addition, by special arrangement, considerable sums were paid out in unreported dividends, which may or may not have reached all holders of the stock.

It appeared in this connection that a gentleman named

	Year	Month	Per Cent	Amount
	1880	Pebruary	3	1,628,265
	1880	August	3	1.778.265
	1881	February	3	1,778.265
	1881	August	3	1,778,265
1	1882	February	3	1,778,265
1	1882	August	3	1,778,265
-	1883	February	3	1,778,265
	1883	August	3	1.778,265
	1884	January	3	1,778,265
	1888	February	1	672,755
	1888	August	T	672.755
	1880	February	I	672.755
	1889	August	1	672,755
	1890	February	I	672,755
	1890	August	T	672.755
	1891	February	T	672.755
	1891	August	Y	672.755
	1802	February	I	672,755
	1892	August	T	672.755
	1893	February	1	672.755
	1893	September .	T	672,755

There were no dividends declared between September, 1893, and the reorganizations the Central Pacific in 1899.

Rivers Wilson had come to the United States in 1894 as presentative of English shareholders.18 Sir Rivers interved officers of the Central Pacific, inspected the property, it was reported in the newspapers after his return to the t that he had arrived at a compromise with Mr. Hunting-

The terms of the compromise were at first only vaguely erstood, but the London Economist, in its issue of March 1805, declared specifically that Mr. Huntington had underen to pay I per cent per annum in the shape of dividends unsatisfactory legislation had been obtained for the adjustat of the Central Pacific's debt to the government, and that had also agreed to pay 2 per cent per annum for two years er the debt question had been settled, during which time shareholders would have opportunity to review their posiand to consider effecting an arrangement of a more manent character.

Mr. Huntington's attention was called to this statement of Economist, but he made no denial of the facts stated. ree years later Mr. Huntington went further, and admitted t he had agreed with Sir Rivers Wilson to pay shareholders ill shareholders—an annual dividend of 1 per cent upon their ck.19 It was understood that the money for the secret Cen-Pacific dividends was loaned to the Central Pacific by the uthern Pacific, although this detail was not authoritatively ablished.

rket Prices of Stock Shares

Neither the Central Pacific nor the Southern Pacific were r investment properties under the Huntington régime, in the se that a stable return could be expected by holders of ir stock, or even in the sense that the selling price of their

San Francisco Bulletin, November 20, 1894. Sir Rivers Wilson was ex-controller of ritish National Debt Office. Testimony of Mr. Huntington before the California Railroad Commission, San isco Examiner, May 14, 1898.

shares remained reasonably uniform or ever reached a quiton in the neighborhood of par. Central Pacific stock so 34 in January, 1885. It rose to 51 in 1886, fluctuated pally between 26½ and 42 during the years from 1887 to 1 and then proceeded to fall in value until in the spring of it was quoted on the New York Stock Exchange at the nor figure of 7½ per share. The stock was ordinarily not tr in to any extent probably because so much of it was held ab

Southern Pacific stock was listed on the New York min 1885, but as has been explained in a previous chapter, tations on the shares were for several years artificial. In the stock sold mostly between 25 and 35. It declined slip during the latter part of 1890 and the early part of 1891 from September, 1891, to August, 1892, most of the sales between 35 and 40. Beginning in 1893 the price of Sout Pacific stock began to decline. In 1894 it reached 179/1895, 1634; and in 1897 it touched the low point of 1895, 1634; and in 1897 it touched the low point of 1896 Central Pacific stock left the market, but Sout Pacific stock recovered to about 50 in the middle of 190 which approximate price 46 per cent of it was purchased be Oregon Short Line.

It is not without interest that the fluctuations in the q tions of the stock of the Central Pacific were quite as ext between 1885 and 1890 as were those of the Southern P shares, although one stock was occasionally a dividend g and the other was not, and that the Central Pacific stock quoted at a distinctly lower figure between 1894 and 1898 was the stock of its apparently more speculative associate. reason is not to be found in the different natures of the proties represented by the two stocks, nor in any different operating conditions. It was plainly due to the grad approaching maturity of the debt which the Central Ps owed to the United States government, and to the comuncertainty as to the effect which government action m

have upon the solvency of the Central Pacific Railroad. So long as there seemed a possibility that the Central Pacific would be called upon to make good, in cash, an advance which by 1898 would amount to nearly \$60,000,000—a sum which few persons believed that the Central Pacific would be able to pay—the stock certificates of this company could have only a speculative value.

The question of the best way to meet the huge obligation which had grown out of the assistance tendered to the Central Pacific Railroad by the federal government under the Pacific Railroad Acts of 1862 and 1864, was indeed the most important financial problem which the company had to solve after Mr. Stanford's death. The two following chapters will be devoted to an exposition of the points involved in this transaction, and to a description of the solution finally reached in the year 1898.

The original loan of the Uni Central and Western Pacific rail 68o. The bonds which were is United States currency bonds, be able semiannually and maturing at fell due therefore between 1895 a been raised as to whether these bo loan or as a donation to the corpo Setting aside the fact that a loan almost as serviceable to the reci shows that the unquestionable p and 1864 was that principal and it met by the railroads for the bene It follows that this bond issue of Central and Western Pacific railr donation. It was the contention that the very name "subsidy" was

The Central Pacific never got of a small subsidy. The government and they expected and did the time the road was built. It was a subsidy as I believe is when

We must therefore recognize that the government advances to the Central Pacific did not constitute a subsidy in the ordinary meaning of that term. At the same time it should be observed that the Pacific railroads occupied a peculiarly advantageous position in respect to the loans which the government made to them. As will presently appear, although interest on this loan was charged, the companies were not obliged to pay a cent of this interest until the maturity of the bonds. This unusual concession was declared by the Supreme Court to be the necessary result of the absence of a precise stipulation to the contrary in the Acts of 1862 and 1864. The court said:

It is one thing to be required to pay principal and interest when the bonds have reached maturity, and a wholly different thing to be required to pay the interest every six months, and the principal at the end of thirty years. The obligations are so different, that they cannot both grow out of the words employed, and it is necessary to superadd other words in order to include the payment of semiannual interest as it falls due.²

Payment of Simple Interest at Maturity

A second concession to the Pacific railroads was made when no interest on deferred interest payments was exacted. Ordinarily in such cases interest is compounded at intervals of six months. On a thirty-year loan of \$27,855,680, issued under the conditions which characterized the subsidies to the Central and Western Pacific railroads, the difference between simple interest and interest compounded semiannually would be \$113,-974,300. That is to say, simple interest would amount to \$50,140,224 at the end of thirty years, while compound interest would equal the materially greater sum of \$164,114,524. Put another way, the value in January, 1865, of the right to receive the principal of the government loan increased by simple interest according to the terms and at the dates contemplated by

^{*}United States v. Union Pacific Railroad, 91 U. S. 72, 86 (1875).

the Acts of 1862 and 1864, was only \$13,000,000. This was the value of the monetary consideration which the federal government accepted from the Central and Western Pacific railroads. On the other hand, the value of the advance made by the government to the same railroads as of the same date was \$23,000,000, or a difference of \$10,000,000. This computation assumes that government bonds were sold at par, and that the current rate of interest was 6 per cent. The difference indicated would be reduced if government bonds were assumed to have sold for less than par, and it would be increased were a higher rate of interest than 6 per cent used in the calculation. Discussions of the Acts of 1862 and 1864 usually fail to make clear that the government demanded simple interest only on its loan, but as a matter of fact this was a feature of the contract which was of substantial value to the beneficiary.

Claims for Indemnity

It was of course expected by Congress that the Pacific railroads would make adequate provisions during the life of the bonds to meet the interest and principal due at their maturity. Before discussing the disputes concerning the size and nature of the sinking funds which should have been erected, a few words may be said regarding certain equities to which the Stanford-Huntington group repeatedly alluded as constituting reasons for not paying the bonds at all. These equities may be briefly enumerated as follows:

The first equity was said to have arisen out of the loss which it was claimed the Central Pacific had sustained through failure to sell the bonds received by it from the government at par. This loss was estimated at \$7,120,074, a sum which was raised by accrued interest up to the time of the maturity of the bonds to the very considerable figure of \$19,936,206. According to Stanford, the government loan netted the company only 65 cents on the dollar. He said:

Indeed, if the company had taken advantage of the time allowed by Congress for the completion of the road, they could not only have sold the government bonds at par, but could also have disposed of their own first mortgage bonds at their face value, which would have been a net gain, over and above what was actually received, of \$7,120,074, the interest on which for thirty years would have been \$12,816,132, which would make an aggregate saving on the government bonds and the bonds issued by the company, principal and interest in round numbers, of about \$40,000,000.³

In the second place the Central Pacific insisted that there should be credited to it a portion of the amount which the government saved in the transportation of government em-

United States Six Per Cent Currency Bonds Issued to Central Pacific Railroad Company

Date Issued	Maturity of Bonds	Interest Commenced	Amount
May 12, 1865	Jan. 16, 1805	Jan. 16, 1865	\$ 1,258,000
Aug. 14. "	" 16, "	Aug. 14. "	384,000
Oct. 16. "	" 16, "	Oct. 16. "	250,000
Dec. 11. "	" 16. "	Nov. 29. "	464,000
Mar. 6, 1866	" 1, 1896	Mar. 6, 1866	640,000
July 10, "	" 1, "	July 10, "	640,000
Oct. 31, "	" 1, "	Oct. 20, "	
Jan. 15, 1867	" I, 1897	Jan. 14. 1867	320,000 640,000
Oct. 25, "		Oct. 25, "	
	. 1,		320,000
Dec. 12, "	" 1, "	Dec. 11, "	1,152,000
June 10, 1868	" 1, 1898	June 9, 1868	946,000
July 11,	A4.	July 10, "	320,000
Aug. 5. "	" I. "	Aug. 4.	640,000
14.	" 1, "	" 13, "	1,184,000
Sept. 12, "	" 1, "	Sept. 11, "	1,280,000
. 21, "	" I, "	" 19. "	1,120,000
Oct. 13. "	" 1, "	Oct. 12, "	1,280,000
" 28, "	" I, "	" 26, "	640,000
Nov. 5. "	" I, "	Nov. 3, "	640,000
" 12, "	" 1, "	" 11, "	640,000
Dec. 5. "	" 1, "	Dec. 5. "	640,000
" 7. "	" I, "	7	640,000
" 30. "	" 1, "	" 29, "	640,000
Jan. 15, 1869	" 1, 1899	Jan. 13, 1869	640,000
" 20, "	" I. "	28. "	640,000
Feb. 17. "	" 1, "	Feb. 17, "	640,000
Mar. 2, "	" I. "	" 17, "	1,066,000
" 3, "	" I. "	Mar. 2, "	1,333,000
May 28, "	" 1, "	May 27. "	1,786,000
July IS. "	" 1. "	27. "	1,314,000
" 16. "	" T. "	July 15, "	268,000
Dec. 7. "	" 1, "	" 16, "	1,510,000
Jan. 2, 1872	" 1, 1898	Nov. 28, 1868	4,120
Total			\$25,885,120

United States Pacific Railway Commission, p. 2529, testimony Leland Stanford. In order that the reader may have full data concerning the issue of the Government subsidy bonds, the following table of amounts and dates of issue is presented:

against the latter. The other points in the companies' contentions do not deserve special mention.

Sinking Fund Provisions

We may now return to the question of the government debt and its repayment. The Laws of 1862 and 1864 contained two provisions intended to enforce the original stipulation that principal and interest of the subsidy bonds should be paid by the beneficiaries. These laws required that 5 per cent of the net earnings of the Central Pacific after the completion of the road,⁵ and second, that one-half of the compensation for services rendered to the government should be annually applied to the payment of interest and principal of the subsidy bonds until the whole amount was fully paid. It was then expected that these two sources of income would provide a fund sufficient to meet both principal and interest in full.⁶

This expectation was not, however, fulfilled. On the contrary, it was already apparent in the seventies that the amount which the companies would be called upon to repay was mounting up much more rapidly than the credits designed to meet it. Six per cent interest upon \$27,855,680 of bonds called for an annual interest of \$1,671,340.80. From 1867 to October 31, 1877, the one-half of transportation account for carrying mails, troops, supplies, etc., withheld by the government and credited to the Central Pacific sinking fund was only \$1,423,555.74, or less than \$200,000 a year. The 5 per cent of net earnings account averaged \$331,481 from 1872 to 1876. The total annual payment by the Central and Western Pacific railroace

⁵ The Supreme Court later held that the Central Pacific and Union Pacific railroad were completed on the 6th of November, 1869, in the sense that the companies becam liable to pay over 5 per cent of their net earnings from this date. (99 U. S. 402, 449 [1878].

⁶ The Central Pacific Pailroad Company is acquireble account with the United State

⁶ The Central Pacific Railroad Company in equitable account with the United State A review of the testimony and exhibits presented before the Pacific Railway Commissic appointed according to the Act of Congress, approved March 3, 1887, by Roscoe Conkli and William D. Shipman of Counsel for the Central Pacific R. R. Co., New York, 1887.

⁷ Report of the Secretary of the Interior, 1877, p. xxviii.

⁸ Report of Mr. Thurman from the Committee on the Judiciary (45th Congress, Session, March 4, 1878, Senate Report No. 111, p. 8).

ompanies, therefore, approximated \$530,000, leaving a deficit of over \$1,100,000 a year. At this rate it was not unreasonable to suppose that the Central Pacific would be much more heavily n debt to the government at the maturity of the bonds than it was at the time of their original issue.

Right of "Set-Off"

Alarmed at the probable failure of the sinking fund provisions, the Secretary of the Treasury, on advice of the Attornev-General, withheld from the Central Pacific Railroad all the compensation due it for services rendered to the government. The same action was taken with respect to the other bond-aided lines. This was clearly illegal, and Congress accordingly passed the Act of March 3, 1871, directing payment of the sums withheld.9 On passage of the Act of 1871, the Secretary of the Treasury began to pay to the Central Pacific and to the other bond-aided companies, the 50 per cent of compensation for services rendered to the government which the statutes required. Since, however, there seemed to be a legitimate difference of pinion as to whether the government should continue to pay noney to companies already heavily in debt to it, Congress proeeded two years later to pass the Act of March 3, 1873, which, n effect, remitted the whole controversy to the court.

The terms of the Act of 1873 were as follows:

That the Secretary of the Treasury is directed to withhold all payments to any railroad company and its assigns, on account of freights or transportation, over their respective roads, of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company, and which shall not have been reimbursed together with the five per cent. of net earnings due and unapplied as provided by law; and any such company may bring suit in the court of claims to recover the price of such freight and transportation; and in such suit the right of such com-

^{9 16} United States Statutes 225 (1871).

a case, the Secretary of the Tr demanded by the bond-aided Pacific, that the companies sho then decide. In pursuance of promptly brought suit against Claims to recover the amount transportation of government deducting one-half of the amount cision being rendered in favor States appealed to the Suprema affirmed.

The foundation of the go United States could legitimate bonds which it was paying cu bond-aided railroads for go reply of the court was, first "set-off" did not apply in the United States had no claim in require the Union Pacific (an other bond-aided railroads) to government advances until the case added the ruling that the

de the night of a o

Not only did the Supreme Court decide completely in favor of the companies in the important matter of "set-off," and in that relating to the date upon which the Pacific railroads became liable for the payment of accruing interest on the subsidy bonds, but it diminished also the sinking fund payments of the companies by holding that under existing legislation it was proper for the companies, in calculating net earnings, to deduct from gross earnings expenses incurred for enlarging and improving their property. The particular account involved was that of expenditure for station buildings, shops, and fixtures. Such expenditures are not ordinarily charged to operating expenses, and the court admitted that "theoretically" they should not be so charged. The practice was nevertheless justified on the ground of general policy, as likely to encourage a liberal application of earnings to improvements. The same decision also authorized the Central and the Union Pacific to deduct interest on first mortgage bonds from earnings before computing the 5 per cent of net earnings which was to be credited to the sinking fund. This ruling was defended as a legitimate consequence of the concession of priority to the first mortgage bonds.13

Need of Governmental Action

While Congress was considering ways and means for enforcing some adequate provision for the eventual repayment of the government's advance to the Pacific railroads, the Central Pacific declared dividends which amounted to no less than \$18,453,670 in the five years from September 13, 1873, to October 1, 1877. In 1873, 3 per cent was declared; in 1874, 5 per cent; in 1875, 10 per cent; and in 1876 and 1877, 8 per cent. To see earnings divided among a group of financiers who were believed to be already overpaid, while the unpaid interest on the government subsidy bonds piled up, was all the more

¹³ Union Pacific Railroad Company v. United States, 99 U. S. 402 (1878).

exasperating because of the apparent helplessness of Some action, however, was presently to be taken. I bill was introduced in the Senate to alter and amend of 1862 and 1864 so as to safeguard the governme In 1876 Mr. Thurman, of Ohio, presented another t was reintroduced in 1877, referred to the Comi Judiciary, and ultimately reached the Senate in Mai This bill ultimately became the Thurman Act of 18

The situation as it appeared in 1878 was succi sented by Mr. Thurman on the floor of the Senate. ernment's loan to the Central and Western Pacific am \$27.855,680. The interest upon that sum for the would be \$50,140,224, making a total of \$77,995,9 probable reimbursement from the 5 per cent of net ear the half of the transportation accounts would be about 000, leaving probably due at the maturity of the gc loan, should the laws remain unchanged, the sum of 904, which, added to the amount that would probab from the Union Pacific, made an aggregate of \$110,2 To this amount there was also to be added in estim payments which the Central Pacific, Western Pac Union Pacific would be called upon to make in the late the amount of the first mortgage bonds of the three co the lien of which was prior to the lien of the subsidy b

It seemed manifest to Mr. Thurman in March, I the bare statement of the amount for which the go would be the creditor of the Pacific railroad compan to satisfy anyone that some step should be taken by to secure the government from loss. This point of

¹⁴ The Congressional history of the Thurman bill is as follows: Introduce 1877, and referred to the Senste Committee on Judiciary (45th Congress Congressional Record, Vol. 6. p. 58); reported back from Committee March Congress, 2d Session, ibid., Vol. 7. p. 1445); debated in Senate March 12 to pp. 1688-2384); passed by Senate April 9 (ibid., pp. 2779-90); approved by P 8 (ibid., p. 2357).

¹⁵ Speech of Senator Thurman of Ohio (45th Congress and Section, 1 Congressional Record, Vol. 7, p. 1690).

usly contested. Objection to any action there was, ut not based on any denial of the assertion that the of the government was becoming impaired.

1 Bill

ne basis of the admitted need, Mr. Thurman, in behalf ommittee on the Judiciary of the United States Senate. eries of concrete proposals. The essence of the Thurwas that the annual payments of the Pacific railroads eventual retirement of the government debt should be icreased. It was contemplated that 5 per cent of the net of these railroads, together with half of the sums due ompanies for government transportation, should conbe applied to the retirement of the subsidy bonds. This ppropriation Mr. Thurman estimated at \$531,000. But ow intended that in addition to this sum there should ed by the government and credited to a sinking fund, · half of the sums due to the companies for government tation; proceeding still further, the Thurman bill proat in case the whole of the government transportation , added to the 5 per cent of net earnings, did not make ual to 25 per cent of net earnings, then the Pacific railould pay into the sinking fund such sums not exceed-20,000 for the Central Pacific and \$850,000 for the 'acific, as would bring the companies' payment up to

ally, the section of the Thurman bill relating to the Pacific sinking fund read as follows:

2. 4. That there shall be carried to the credit of the said on the first day of February in each year, the one-half compensation for service hereinbefore named, rendered e Government by said Central Pacific Railroad Company, plied in liquidation of interest and, in addition thereto, shall, on said day ear, pay into the

Treasury, to the credit of said sinking fund the sum of one million, two hundred thousand dollars, or so much thereof as shall be necessary to make the five per centum of the net earnings of its said road payable to the United States under said act of eighteen hundred and sixty-two, and the whole sum earned by it as compensation for service rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to twenty-five per cent of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the thirty-first day of December next preceding. 16

Mr. Thurman estimated the total payments which the Central Pacific would have to make under his bill at \$1,000,000 annually, or substantially more than the accruing 6 per cent on the subsidy loans. 17 In case earnings should be insufficient to meet interest charges on underlying first mortgage bonds after the deduction of 25 per cent, the Secretary of the Treasury was authorized to remit as much of the 25 per cent as might be necessary to avoid default.

Disappointing Results

From the point of view of the government, the clauses of the Thurman bill relating to the annual payments of the companies were of the first importance, because upon them depended the adequacy of the provision for the eventual cancellation of the government debt. As a matter of fact, the payments were less than Senator Thurman anticipated, because the earnings of the Pacific railroads proved disappointing. Instead of \$1,000,000 annually, the average contribution up to 1897 was only \$629,690. In particular, the clauses requiring the companies to add to the sums earned from government transportation and that measured by 5 per cent of net earnings sufficient to bring the total up to 25 per cent of net earnings, were ineffective. In

^{16 20} United States Statutes 56 (1878).

¹⁷ Report of Mr. Thurman from the Senate Committee on the Judiciary (45th Congress 2d Session, March 4, 1878, Senate Report No. 111, Serial No. 1789).

it one year after 1883 was anything paid on this last account. ideed, the earnings of the Central Pacific fell so low that the evernment transportation and 5 per cent accounts at times sounted to 50 per cent of net earnings without any addition om other sources.

It was assumed by some speakers on the Thurman bill in e Senate, that under the proposed plan the total contribution the Pacific railroads toward the reduction of the governent debt was to be paid into a sinking fund. This was not, wever, the case, as a careful reading of the statement already ade will make clear. Instead, the payments which these railads had been making under the Acts of 1862 and 1864 were be continued, and were to be credited directly to the railroad bt as before. The money was to be held in the United States reasury, and no interest was to be allowed upon it.18 It was ily the balance, comprising the half of the payment due the mpanies for government transportation which they had reived under the Act of 1864, and such additional payment, not ceeding \$1,200,000 or \$850,000 respectively, as would be cessary to bring the whole contribution of the companies ider the proposed law up to 25 per cent of net earnings, which as credited to the sinking fund. The distinction is important, _ cause the sums paid into the sinking fund earned compound terest, whereas the sums credited to bond and interest account rned no interest at all. That is to say, the contributions to the 1king fund were to be invested in government bonds, and the terest on these bonds was to be reinvested semiannually in the me security, but other payments merely gave rise to credits the government books.

nking Fund Investments

The mention of the sinking fund leads naturally, however, a reference to the provisions of the Thurman bill relating to

²⁸ Annual Report of the Commissioner of Railroads, 1882, p. 440.

ing power of the fund by re of classes which either bore I manded considerable premit premium paid by the Centra mately 13 per cent. In 18 reported that between the defund in 1878 and the date of government had bought born for the Central Pacific, for \$1,110,409.62, or an average premium paid had gone as earlier years the payments of exceeded the earnings of the state of the principal bonds in the principal bonds in the control of the principal bonds in the state of the state of the principal bonds in the state of the state of the principal bonds in the state of the state of the principal bonds in the state of the state o

The principal bonds in vested up to 1882 were the 5 per cent funded loan of 18 of 1907. In 1881 the funded at 3½ per cent. In 1882 the exchanged these bonds for a as the bonds which bore the h

roads declared in 1883 that it would require a century or more at the rate provided in the Thurman Act to accumulate a fund sufficient to discharge the railroad debt, with a strong probability that even then it could not be done.21 The Auditor of Railroads in 1879, the Secretary of the Treasury in 1881, and the Commissioner of Railroads, in various reports, all urged that the field for investment of the sinking funds be widened, at least to include the first mortgage bonds of the Pacific railroads. Since the lien of these bonds was prior to that of the sinking fund itself, it seemed appropriate to allow the Secretary of the Treasury to buy them with sinking fund money. The suggestion was adopted by Congress in 1887,22 with the result that interest on the funds placed in this new investment amounted to 415 per cent. This was a substantial increase from the 21/2 or 3 per cent realized from government bonds, though still less than the 6 per cent carried by the subsidy bonds themselves. 23

Passage of Bill

The Thurman bill was carefully considered by the Senate before its enactment, and may fairly be said to embody the best udgment of Congress at the time of its enactment. The final ote in the Senate was taken on April 9, 1879. Forty Senators

22 24 United States Statutes 488 (1887).

²³ Annual Report of the Treasurer of the United States, 1887, p. 28.

Owing to the protests of the Pacific railroad companies at the low rates of interest ed by the sinking funds, considerable amounts remained uninvested between 1883 and to The following table shows the cash uninvested in the Treasury to the credit of the tral Pacific Railroad Company for a series of years:

1	Date	8																										Amount
																												527,886.53
		1883																										844,652.13
- 15	30.	1884		ä		6	6.4	a	ú	80	43	ä	*	 Á	6	8		Ġ			e.			œ.	k	ĸ.	ě,	1,089,159.75
**	30.	1885	×	ü	٠.			a	À	S.	4.	S.	٠.	 4				ĺ.									×	2,020,900.13
Dec.	31,	1886	я	ä.	٠.	ě.			ä	ŵ.		ä		 ×	ä				i,	Ä			į,	'n.				2,345,984.21
		1887																										76,905.49
June	30,	1889	*			4		.,	×	*	*	*			*	*		ě				.,			×			2,766.14

No interest was earned on these uninvested balances. After 1886, with the single ex-ption of the year 1895, the uninvested portion of the sinking fund was negligible. (Annual ports of the Commissioner of Railroads, 1882-89.)

⁴¹ Annual Report of the Commissioner of Railroads, 1883.

In neither house was there sion. Doubtless the passage the general unpopularity of though adequate reasons for a existed. It was the period o 1873—the epoch of Granger bills, of revelations regarding

Sentiment ran strongly again Railroads still had stalwart sup to say that the presumption in

Feeling of Railroad Men

There is plenty of evidence felt very bitter that the Thur passed. Stanford declared tha right had ever before been attended to two examples of such attachistory; one being the suppresion the time of Edward the Secsion of the religious houses in Undoubtedly, also, the railroad

attempt to prevent the passage of the Thurman Act. The reader's attention has already been directed in a previous chapter to correspondence relating to the Thurman bill which passed between Huntington and Colton in 1877 and 1878. It will be recalled that in January, 1878, Huntington wrote that matters did not look well at Washington. He thought, however, that the railroad would not be much hurt, although "the boys are very hungry, and it will cost considerably to be saved." Some time before this, in May, 1877, Huntington wrote:

We must have friends in Congress from the West Coast, as it is very important. I think that we can kill the open highway, and get a fair sinking fund bill by which we can get time beyond the maturity of the bonds that the Government loaned us, to pay the indebtedness.²⁶

Again, in November, Huntington said:

Some parties are making great efforts to pass a bill through Congress that will compel the Union Pacific and Central Pacific to pay large sums into a sinking fund, and I have some fears that such a bill will pass... The temper of Congress is not good and I fear we may be hurt.²⁷

A letter from Colton dated March 5, 1878, reads:

By the telegraph this morning in the papers I see outline of Thurman's Sinking Fund Bill, etc. It does seem as though the whole world, Courts and all, were determined to rob us.

.

I know you are having a terrible struggle on that side, and think of you very often, but, Huntington, I see no way but to fight it out on these lines, and fight them inch by inch while we last; let's look to paying our debts, incurring no more, and stand by the wreck to the last. We can at least die game.²⁸

When the Thurman bill passed the Senate, the correspondence took a still more gloomy turn. Huntington wrote Colton

Colton case, p. 1770-71.
 Ibid., p. 1802, November 9, 1877.
 Ibid., argument of Hall McAllister, p. 248.

on April 19, 1878, that in his judgment the House would follow the Senate's lead. He had made some mistakes, of which the greatest was Gould's going to Washington. Colton replied, on April 29:

We all agree with you that this Congress is simply a band of robbers. They were such a set of cowards they dare not go onto the highway and give the man they rob an even show with them, but went to Congress and did it through that channel. But Huntington, we will live to see many of these fellows come to grief. I trust the day will soon come that we can get in a shape that you can avoid going to Washington during a session of Congress. A few sessions like the present one and the last will wear you out . . .

I think you will remember I wrote you once or twice that in my opinion Jay Gould would be a heavy load for us to carry in Washington or elsewhere, whenever we had connections with him that would affect our interests, on account of the general feeling against him. So I am not surprised to read what you say of him and the Funding bill, but it was a thing we could not help, as I understand it . . .

I hope Congress will adjourn soon, and that you will be able to get out here as early as possible, for I want very much to see you again. There is much for us all to talk over and look after. I do not think you will find anyone to buy you out, nor do I want you to. I think we must stick to the wreck.²⁹

²⁹ Colton case, argument of Hall McAllister, p. 249. Huntington never forgave Congress for having passed the Thurman bill. Years afterward he inserted the following comments in an autobiographical statement which he gave to the California historian, H. H. Bancroft:

[&]quot;Senator Ransom voted for the Thurman bill. He came out and said 'Mr. Huntington, I voted for that bill. I knew I was wrong. He said, 'I ought not to have done it. Said I, 'Senator Ransom, I pity you.' Said he, 'What do you say?' Said I, 'Senator Ransom, I said and I repeat it for I do really pity you.' I turned on my heel and left him. Now there are a great many men in just that kind of a way; they don't dare to vote according to their convictions; they are afraid of what other people think of their acts. . . . "

[&]quot;I know old Thurman well. He expected to be President of the United States by pasing the Thurman Act, but he was not honored of course. I don't believe he was in earnest. I don't believe he thought the Act was proper. It was a false contract. There was no warrant in law or equity. He turned demapogue for political purposes; I think Thurman is a pretty good liar; lying was his best forte. He is an impressive speaker; he always seems to be so in earnest." (Huntington manuscript, p. 24-5, 76-77.)

It may throw some light upon the attitude of the Huntington group toward the Thur-

Letters such as those quoted display the state of mind of Central Pacific associates during the months when the urman bill was under discussion. It was perhaps natural at they should have opposed sinking fund legislation, for this t into the surplus which the Central Pacific would otherwise ve had for dividends, and depressed the price of the railad's securities. Nor, indeed, was it perfectly clear that the w legislation did not constitute a breach of the contract beeen the Pacific railroad companies and the government which uld be deduced from the Acts of 1862 and 1864. The legision in these acts had, it is true, reserved to subsequent ongresses the right of amendment and repeal, but it was certain, nevertheless, to what extent this right could properly exercised. On this point a decision of the Supreme Court as had in 1878, upholding the constitutionality of the Thuran Law on broad grounds, but by a divided court. 80

narge Against Railroad

The unfortunate fact about the Thurman Act, however, as not that it excited the anger of representatives of the rail-ad companies to which it applied, but that it proved a failure its primary purpose of providing for the eventual retirement of the subsidy bonds. But before summarizing the work-gs of the law in this respect, a word may be said regarding retain disputes which occurred in the course of its administration.

In February, 1881, Thomas French, Auditor of Railroads, ade the charge that the Central Pacific was diverting business om the subsidized portions of its line to its leased properties order to lessen the payments required under the Thurman

n Act to remember that the moneys in the sinking funds which the Central Pacific estabsed for the retirement of its own mortgage securities were, at least in part, loaned to the stern Development Company, and used by this company in railroad building in southern lifornia. This was, of course, an ideal arrangement from the point of view of Huntington his friends.

¹⁹ Sinking Fund Cases, 99 U. S. 700 (1878).

Mr. French's suggestion we ment subsequently advanced the retain all the compensation for ment by the bond-aided compantions of construction of particle company took a different view to an opinion of the Attorney-Carry of the Treasury in 1884 entire mileage of the Pacific retive decision. The Supreme Coff the companies, 32 and the sover.

In subsequent years the earn tral and Union Pacific which I were credited, in so far as they ness, as a part of the 5 per cent of panies were required to apply to government debt. This meant: keeping, which was increased by of which no detailed mention is final settlement was concluded I the government, credits to this

Definition of Net Earnings

In addition to the controversy over earnings on government ransportation over non-bond-aided lines, there developed a econd difference of opinion over the calculation of the net arnings of the Pacific railroads. It has already been observed hat the Law of 1862, as interpreted by the Supreme Court, illowed the Pacific railroad companies to charge expenditures for additions and improvements to operating expenses, and hus to reduce their net earnings, upon the size of which the rate of provision for repayment of the government debt depended. The Central Pacific insisted that the same practice was legitimate under the Thurman law. But in this lastnamed legislation the wording of the clause relating to net earnngs had been changed. In 1862 no definition of net earnings had been given. In 1878 it was provided that net earnings should be calculated "by deducting from the gross amount of their [the Pacific railroads'] earnings, respectively, the necessary expenses actually paid within the year in operating the same and keeping the same in a state of repair, and also the sums paid by them respectively within the year in discharge of nterest on their first mortgage bonds." This was deliberately intended as an amendment of the Act of 1862. As Mr. Thurman told the Senate, it was his intention to leave the question of the nature of the net earnings, so far as the past was conerned, for the decision of the Supreme Court without any etroactive legislation at all, but to define net earnings for the uture.

In spite of the apparently clear wording of the law, and the lefinite expression of the views of the Senate Committee on he Judiciary at the time the act was passed, the Central Pacific till maintained that it possessed the right to deduct expenditures for improvements and betterments from gross earnings, in the process of arriving at the figure of net earnings upon which its contributions toward the retirement of

government indebtedness were in part based. A decision of the Court of Claims and another by the Supreme Court of the United States were necessary before this position was abandoned.⁸⁴

Still other controversies arose between the Union Pacific and the United States government over earnings from the operation of the bridge across the Missouri River between Council Bluffs and Omaha, over receipts from the operation of Pullman cars, and over the payments by the Union and Central Pacific railroads to the Pacific Mail Steamship Company according to the terms of contracts described in a preceding chapter.³⁵

Inadequacy of Law

The persistent disputes between the government and the railroad companies over the proper interpretation of the Thurman law made the administration of the statute difficult. The primary defect of the act, however, lay in the fact that the contributions which it compelled the companies to make were too small to provide for the retirement of the subsidy bonds with interest at their maturity. How far the ultimate provision under the law fell short of a proper accumulation may be seen from the table given in the next paragraph, in which the debits and credits on account of the government loan to the Central and Western Pacific railroads are given as of June 30, 1897, six months before the greater part of the subsidy bonds fell due.

According to the Commissioner of Railroads, the account between the United States and the Central Pacific Railroad stood on the 30th of June, 1897, as follows:⁸⁶

36 Annual Report of the Commissioner of Railroads, 1897.

³⁴ United States v. Central Pacific Railroad Company, 138 U. S. 84 (1891). See also Annual Report of the Commissioner of Railroads, 1883, p. 428 f. 35 54th Congress, 2d Session, January 11, 1897, Senate Document No. 52, Serial No. 3460.

STATEMENT ON THE GOVERNMENT LOAN TO THE CENTRAL AND WESTERN PACIFIC RAILROADS, AS OF JUNE 30, 1897

Debits: Principal of subsidy bonds issued Interest paid by the United States	
Total debits	\$75,809,819.78
Credits:	
Applied to bond and interest account: Transportation	\$7,977,535.66 658,283,26
Transportation	5,027,848.71
Cash	633,992.48
Proceeds of sinking fund investments	1,683,127.38
Total credits	\$15,980,787.49
Balance of debt, June 30, 1897 Excess of interest paid by the United States over	
all credits	

The reasons for the inadequacy of the Thurman law were, first, the failure of the net earnings of the Pacific railroads to increase as rapidly as had been expected, and second, the meager results of the sinking fund accumulations. Net earnings were disappointing because of general business conditions, especially after 1893, and because of competition from other transcontinental railroads. The accumulation of the Central Pacific sinking funds proceeded at a slower rate than had been anticipated, for reasons already given. Up to June 30, 1897, the table shows that the total proceeds of sinking fund investments by the Central Pacific Railroad had amounted to only \$1,683,-127.28. When it is understood that this was less than a third of the sum which the moneys paid into the sinking fund would have earned if invested promptly and continuously at 6 per

Pacific Railroad, \$31,000,000 against both the interest and t to the extent of \$7,300,000, th as it had been presented in 18

CHAPTER XXI

INAL SETTLEMENT OF THE CENTRAL PACIFIC INDEBTEDNESS TO THE GOVERNMENT

Refunding Proposals

It is the purpose of the present chapter to describe proposals or the settlement of the government's claims against the Cenral Pacific Railroad which were made between 1878 and he date of maturity of the subsidy bonds, and to explain in some detail the adjustment finally arrived at in 1899.

Soon after it became apparent that the Thurman law would not provide adequately for the retirement of the federal subsidy bonds at their maturity, agitation began for other and more stringent arrangements. As early as 1882, the Commissioner of Railroads suggested that the indebtedness of the Pacific railroads be changed from a running book account and that there be a settlement and actual delivery of interest-bearing bonds for the amount found to be due upon a convenient lay, say July 1, 1883. On this day he proposed that the comanies should deliver to the government 100 redemption bonds, ach representing a hundredth part of the indebtedness. One ond was to fall due thereafter every six months, and interest was to accrue as before upon the unpaid bonds outstanding.

Five years later the United States Pacific Railway Comnission, in an important report, recommended also that the net indebtedness of the Central Pacific Railroad Company be secretained as of a certain date—this time as of July 1, 1888 and that arrangements be made to fund the amount so determined into new railroad fifty-year 3 per cent bonds, which should be made a lien upon all the property which the Central

Annual Report of the Commissioner of Railroads, 1882, p. 440.

Frye-Davis report, from the mitted the sections dealing w railroads, respectively. The did, personally examine the r tral, and Western Pacific R that of the Central Branch U a plan for refunding the Paci

So far as the Central Pac proposed that the company s years from date, with intere serious financial condition of necessity of building sever, mileage in California, I per capitalized for ten years. Depany's annual payment was \$650,000 per year; after that annually. The Frye-Davis smaller payment and contempthan did the United States Paits predecessor, it demanded curity, a mortgage on all the land description which the Ce serted a provision that the rental paid by the latter should never be less than the sums that the bill called for from the Central Pacific, thus making the Southern Pacific in effect a guarantor of the arrangement.³

Further Reports

In 1894 still another report was rendered, this time by James Reilly, of Pennsylvania, from the House Committee on Pacific Railroads. The report reviewed briefly the history of the relations between the Pacific railroads and the government. It was opposed to foreclosure. Instead, it suggested that the debt due to the United States be calculated as of January 1, 1895, and be funded into railroad 3 per cent bonds. The companies were then to begin paying on the debt at the rate of one-half of I per cent semiannually, for a period of ten years, commencing on the 1st of July, 1895. For the next period of ten years, three-quarters of 1 per cent was to be paid; for the next period I per cent; and so continuing that the railroad bonds, and therefore the principal of the debt, should be wiped out in fifty years. Meanwhile the railroads were to pay off their first mortgage bonds, leaving the new funding bonds a prior lien upon the property of the companies, including both the aided and the non-aided portions. Nothing was done with this report except to submit it.4

As the period when the greater part of the subsidy bonds were to mature approached, committee reports upon the Pacific railway debts multiplied. On the 28th of January, the Committee on Pacific Railroads submitted a long discussion through Senator Brice, of Ohio. The committee was opposed to government operation and pessimistic about the results of a foreclosure sale. It recommended that the subsidy bonds be re-

¹ Prye-Davis Report (51st Congress, 1st Session, Pebruary 17, 1890, Senate Report No. 293, Serial No. 2703). See also speech by Senator Frye, ibid., Congressional Record, p. 1377 f.

Reilly Report (53d Congress, 2d Session, July 21, 1894, House Report No. 1290, Serial No. 3272).

funded for such a period and at such a rate of interest as should enable the companies, under ordinary circumstances and business conditions, to meet the current interest and a portion of the principal of the debt each year.

Powers Bill

On April 25, 1896, Mr. Powers, of Vermont, in behalf of the House Committee on Pacific Railroads, presented a bill and a report to accompany it. The House committee now definitely proposed that the Pacific railroad companies issue, and that the government accept, bonds equal in amount to the whole balance due the United States, and bearing interest at 2 per cent, payable semiannually. These bonds were to be secured by second mortgages, which were to embrace not only the subsidized parts of the Pacific railroads, but also all the other railroads, terminals, lands, and equipments belonging to the companies, to which the lien of the government did not then extend. It was provided that the companies should make annual payments on account of the principal of the bonds-smaller payments during the earlier, and larger payments during the later years—in such fashion that the debt would be repaid in about eighty-five years.

In addition to providing the government with the additional security which came from extending the lien of its second mortgage bonds, the Powers bill required, as one of the terms of the settlement, that the lease of the Central Pacific Railroad to the Southern Pacific Company should be so modified as to require, first, that the Southern Pacific Company guarantee the full payment of the obligations imposed upon the Central Pacific by the new legislation so long as it should remain lessee of the property; and second, that if the Southern Pacific Company should consent to the termination of the lease before the maturity of all instalments payable under the act, it should in that event guarantee the payment by the Central Pacific of

Il required payments. In case of any abrogation or terminaion of the lease, the principal of all bonds issued under the act was, at the option of the President of the United States, mmediately to mature.⁵

The Powers bill was debated in the House of Representatives from January 7 to January 11, 1897. It was supported by the friends of the railroad companies, doubtless because of the long period over which the railroad debt was to be extended and the low rates of interest on the refunding bonds. It was opposed by anti-railroad men, and by those who thought the pargain a bad one for the government from a business point of view, and it was finally defeated because Congress was mixilling to extend the government loan at 2 per cent for eighty-five years until more convinced of the necessity of compromise.

Additional Schemes

Four days after the submission of the Powers report and to accompanying bill, a report was presented to the Senate by Mr. Gear, of Iowa, which recommended the passage of a subtantially identical statute. Nothing was done with this report, nor with a suggestion which Mr. Gear made in January hat the whole matter be referred to a commission to be apointed for the purpose.

The submission of the Gear report brings the account of ne negotiations for the settlement of the Pacific railroads' inebtedness down to the spring of 1897. Four Congressional

⁵ Powers Report (54th Congress, 1st Session, April 25, 1806, H. R. Report No. 1497, rrial No. 3462). The Powers bill also required the consent of the Southern Pacific to the oppopriation for payment of Central Pacific indebtedness, of the sum of \$2,409.818.20, hich stood credited on the books of the United States Treasury to the Central Pacific for rvices on non-aided lines. The consent of the Southern Pacific was necessary for this perpopriation because a considerable portion of the amount in question had been adjudged to the Court of Claims to be due to the Southern Pacific for the reason that the services for hich the sums mentioned were credited had been in large part performed by that company.

⁶ The Powers bill was finally defeated—yeas, 103; nays, 168; not voting, 84. (54th longress, 2d Session, Congressional Record, p. 689.)

⁷ Gear Report, 1896 (54th Congress, 1st Session, May 1, 1896, Senate Report No. 778, erial No. 3365; The House bill was numbered H. R. 8189; the Senate bill S. 2894).



nad provided that the a upon the railroad proper lying bonds.

It would be possible the repayment of the su the eighties and the nine by other persons than m other ways than through mittees to the legislature. tent because of limitation the greater part of outs refunding bills must be ber that the discussion of the nineties, was quite as conducted with great bitt pression. Indeed, the exquite inadequately set for

Railroad Proposals

The general railroad p of the subsidy bonds wa ment should be remitted tended that the government on the Central Pacific Railroad prior to the subsidy bonds, and in lieu of them issue government bonds bearing interest at the rate of 2 per cent. The saving to the company, due to the reduction in the interest rate on first mortgage bonds from 6 to 2 per cent, would enable it to pay off its indebtedness to the government, sufficient time being given and a moderate rate of interest allowed. In case even this settlement were rejected, it was proposed that the government refund the subsidy bonds by a new issue, running 100 or 125 years, and bearing interest at the rate of 2 per cent. 10

In opposition to the railroad proposals, western shippers, who represented the extreme anti-railroad sentiment, violently objected to a refunding bill of any description. It was the belief of California men that a refunding bill would simply saddle the railroad debt upon the shipping public. For the railroad would make the necessary annual payments for interest and sinking fund from the proceeds of rates, which would necessarily be paid by the shipper. As able a man as John T. Doyle, of San Francisco, maintained, moreover, that refunding was unnecessary, because it would be found that the assets of the Central Pacific would be adequate on foreclosure sale to meet both its first and its second mortgage obligations. In saying this, Mr. Doyle relied upon the ability of the government to hold directors of the Central Pacific personally liable for misappropriation of funds, as well as upon alleged illegalities in the issue of first mortgage bonds, and upon the chance that the courts would consider the San Francisco terminals of the Western Pacific, together with other miscellaneous property, subject to the lien of the government mortgage, although the property was not "bond-aided" in a narrow sense.11

Frye-Davis Report (51st Congress, 1st Session, February 17, 1890, Senate Report No. 293, p. 76, Serial No. 2703).

¹⁰ San Francisco Examiner, February 18 and March 15, 1890.

¹¹ Memorial of the committee of fifty appointed at the San Francisco mass meeting of December 7, 1895.

Pacific Coast Agitation

As an example of the feeling in the West concerning the policy of refunding, particular reference may be made to expressions of opinion in the city of San Francisco. In May, 1894, a mass meeting of citizens of San Francisco elected a committee of three to proceed to Washington and to oppose the funding of the debt of the Central Pacific Railroad to the United States. In a memorial addressed to the Senate and House of Representatives, and designed to oppose the Huntington scheme of a long-time extension of the subsidy bonds at a low rate of interest, this committee said:

In the name of the people of San Francisco, of California, and of the whole Pacific Coast, we protest against the acceptance by Congress of a plan which will keep more than \$77,000,000 of the public's money from being paid to the United States Treasury, and which will secure in their present wrongful possession of that sum, besides promoting their other selfish and unpatriotic schemes, men who have for thirty years been wrecking a railroad, defrauding the Government, corrupting public morals, plundering and oppressing the people, and violating every principle of business probity, of law, right, justice, and public policy.

Another meeting, held in the Metropolitan Temple, in San Francisco, on June 19, 1894, called on the state conventions of both parties to introduce into their platform resolutions against the funding of the debt of the Central Pacific Railroad Company to the United States at the rate of 2 per cent per annum for one hundred years, at a rate of 4 per cent per annum for fifty years, or at any other percentage, or during any other period. Under the leadership of the eccentric Adolph Sutro, this meeting adopted an arraignment of the Southern Pacific which was almost inarticulate in its denunciation. It was charged that:

This monopoly has spread a black cloud over the surface of the State. It has manœuvred through a large number of corporations, of which the Southern Pacific Company of Kentucky is now the center. It has seduced and drawn into its service many prominent men, whose Americanism and integrity were not equal to their brains. It has antagonized the people, minimized immigration, choked enterprise, and, in this unrelenting attack, has used the supposed representatives of the people in each department of the government, Municipal, State, and National. It has controlled legislation, executive action and the administration of justice. It has discriminated in freights and fares and, at every station on its many thousands of miles of railroad, maintained a Custom House of its own.

This was followed on June 29 by a telegram, signed by Sutro and addressed to Grover Cleveland, advising the President that history would record him as the greatest penefactor of the American people if he would recommend the foreclosure of the mortgages on the Pacific railroads and the purchase of these railroads by the government at foreclosure sale. It was Sutro's idea that the government should hold the transcontinental lines as a great national highway, and permit all American railroads to run their locomotives and cars over it under payment of tolls to be regulated by the Treasury Department.

During the summer of 1894 the San Francisco Examiner circulated a petition against the Reilly funding bill, to which, by September 20, it was said that 194,663 names had been attached. In January, 1895, both the Colorado and the California legislatures adopted resolutions opposing the refunding. In California there was not a dissenting vote. The same month another mass meeting was held in San Francisco, and in December, 1895, still another one followed, with the result that a committee of fifty was appointed, and a recommendation sent to the national government.

The San Francisco agitation in 1894 and 1895 was addressed to the comparatively moderate provisions of the

¹³ San Francisco Examiner, September 21, 1894.

Reilly bill, proposing the refunding of the government debt for fifty years at 3 per cent. In 1896, when the more liberal Powers bill was under discussion, the agitation revived. At this time Mayor Sutro, of San Francisco, made an unsuccessful attempt to persuade the people of Kentucky to repeal the charter of the Southern Pacific Company. Although this particular move met with no success, a state anti-funding convention was held at the Metropolitan Temple in San Francisco on January 18, 1896, a new committee was appointed, and a new memorial was framed.

This memorial reiterated and reinforced most of the arguments presented in the memorial of the committee of fifty. It dwelt on the alleged frauds of the Central Pacific and Southern Pacific companies, the uncertainty as to the extent of the property of these corporations, and as to the validity of certain liens against them. The whole matter, the memorial urged, was distinctly one for judicial investigation. It urged that the government let foreclosure take its course. The Central Pacific should not be allowed to confirm possession of money it might have stolen. It was sound policy, the memorial agreed, to make sure that the company really had not enough to pay its debts, and to this end to see that transferred, withdrawn, and stolen assets were restored. Agitation along these same lines continued through 1896, and in January of the following year the legislature adopted a resolution opposing refunding and calling for foreclosure if necessary.18

Different Points of View

The fundamental difference between the sentiment in Congress in 1897 and that on the Pacific Coast was that the legislature at Washington addressed itself to Pacific railroad legislation with the object of recovering as much of the government's advances to the Pacific railroads as was possible under

¹³ Laws of California, 1897, p. 581. Joint Resolution, adopted January 8, 1897.

the circumstances. The gains sought were primarily financial. In California, on the other hand, public sentiment was more concerned with railroad service and railroad rates than with finance. And this was a principal reason for the insistence upon foreclosure and the equanimity with which government operation was regarded. That the difference between the two points of view was not more fully appreciated was doubtless because the necessity of shaping its arguments so as to influence Congress led the Pacific Coast to talk in terms of finance, even when they thought in terms of monopoly. So much must be understood in order that the animus behind the San Francisco agitation may be clear.

From the point of view of Congress, the weakness of the government's position in 1897 lay in the fact that its debt was secured by a second mortgage, and a mortgage which covered, at that, only a portion of the road. There seems to have been substantial unanimity of opinion among official representatives of the government after 1882 and 1883, that the bond-aided parts of the Pacific railroads would not bring at a forced sale a sufficient price to cover both the first and the second mortgage liens upon them. In fact, it was believed that if the Pacific railroad property should be put up at foreclosure sale, no bidder would appear except the Huntington-Stanford interest, and perhaps the Union Pacific Railway. Under these circumstances the price obtained was sure to be low, and it was not unlikely that the result of the sale would be to leave the railroad in the hands of its original owners free from all obligations to the government. "These very men whom you are now scolding about," said Mr. Powers, of Vermont, in 1807, "the very men who own the terminals and own these connecting lines are the only ones who can safely bid on the property, and probably they will be the only bidders. They would get the property at their own figures." 14

^{14 54}th Congress, 2d Session, January 7, 1897, Congressional Record, p. 559.

dered to the government by the be paid into a sinking fund if subsidy bonds or should be applied bonds, whether these saided or on non-bond-aided. When this contention reached jected, on the ground that the preted, applied only to the bo

The court went on to rem tion which the government he would not only render the Act a breach of faith on the would make it an invasion of railroad company. This in have approved a law which cle to turn over to the government portation of government troo tions of its lines which had n ment bonds. If this really rep then it seems still more unlike lien of subsidy bonds to the would have been sustained.

gress was of the opinion that a rigid insistence by the government upon its legal rights would result in a minimum rather than a maximum recovery from the Pacific railroads. At the same time, the shrewder heads in the legislature were perhaps hopeful that results might be obtained by negotiation which could not be secured by legal proceedings. Hence the refusal to approve of any specific plan for the settlement of the debt.

In the year 1897 the pending maturity of the United States subsidy bonds made the situation too critical for action to be much further delayed. On March 4, 1897, the 54th Congress and the second administration of President Cleveland came to an end, and the administration of President McKinley began. A special session of Congress, called by the new President, convened on March 15. During this session Mr. Gear introduced a bill for the appointment of a commission to settle the debt of the Central Pacific and Western Pacific railroads to the government.²⁷ This bill failed to pass. In December, 1897, the first regular session of the 55th Congress convened. By this time the maturity of a large portion of the subsidy bonds was distant only a few weeks. That is to say, the bonds issued to the Central and Western Pacific railroads matured as follows:

January	16,	1895	\$ 2,362,000
**	I,	1896	1,600,000
"	1,	1897	2,432,000
**	I,	1898	10,614,120
"	1,	1899	10,847,560

About \$2,000,000 of these bonds were held in the sinking Fund established by the Thurman Act. These had naturally been canceled as they fell due. On December 21, 1896, moreover, most of the remaining bonds held by the government in the Central Pacific sinking fund had been sold and the proceeds applied to maturing indebtedness.²⁸

²⁷ Gear Report, 1897, 55th Congress, 1st Session, April 8, 1897 (Senate Report No. 20, 31 Commercial and Financial Chronicle, Vol. 63, p. 1114.

eral a commission with full pow the government growing out of Central Pacific and Western Pac commission was required to sub President for his approval, and less sum in settlement of the de the full amount of the princip bonds. It was empowered to repayment not exceeding ten less than 3 per cent, and to acco expedient.33 So far as the com Mr. Gear's proposal of the pre It seems probable that nego advanced stage before the Ac Griggs was later of the impres passed to fit a tentative agre made.34 If such were the cas entrust the matter to the exec after having once refused to bly, also, the fact that the Uni closure on November 1, 18 sufficient to cover the full a

The indebtedness of the Central and Western Pacific railroads to the United States government as of February 1, 1899,
was \$58,812,715.48. These figures were reached by adding 1
thirty years' interest at 6 per cent to the original loan of \$27,855,680, and by deducting accumulated credits resulting either
from the deposits in the sinking fund established by the Thurman law, or from the operation of the bond and interest account
originating in the Acts of 1862 and 1864. Comparison of the
figure of \$58,812,715.48 with the slightly larger amount
given in the previous chapter as of June 30, 1897, will show
that during the intervening nineteen months the net amount of
indebtedness had slightly decreased.

Plan of Settlement

In view of the impending maturity of large quantities of subsidy bonds, the first essential point in the negotiations between Mr. Speyer and the government was necessarily that more time should be allowed the Central Pacific for the payment of its debt. It was agreed that at least certain portions might be extended for as long as ten years. Mr. Speyer was of the opinion that, given this extension, the Central Pacific could repay its debt in full—a striking contrast to the former statements of Central Pacific Railroad men. By paying the debt in full was meant paying with interest on all delayed balances. 36

In order to cover the matters just referred to, Mr. Speyer agreed in 1898 that the indebtedness of the Central Pacific to the government should be refunded into twenty notes of the railroad company, falling due one every six months, beginning August 1, 1899, and ending February 1, 1909. The notes were to carry interest at 3 per cent per annum, payable semiannually. Taken by itself, this offer was the most liberal that the railroad company had ever made. Yet it represented up to this point only a promise, without security. In order to provide secur-

¹⁶ United States v. Southern Pacific Company, p. 1199, testimony James Speyer.

guaranty was received with for it increased the government's by former bondholders.

In subsequent years there government relied on the So essential element in the secu repayment of the governmen fact of the guaranty was not ment of February 1, 1899, bet government, nor was it referre 15, 1899, which the commis Central Pacific indebtedness clauses of the refunding mort of all concerned is that the gu vital part of the agreement, an went so far as to say that the C guaranty would not have been to which the government was United States Treasury Depart in proper form the guaranty of

Treatment of Stockholders

Central Pacific, the government, and the Southern Pacific in 1899 shows that the last-named company participated in the reorganization plan which has been described to the following extent:

It became guarantor in respect of a bond issue (new 4 per cent first mortgage) of It became guarantor in respect of a bond issue	\$100,000,000
(new 3½ per cent second mortgage) of It issued its own bonds for the purchase of \$12,000,000 of the preferred stock of the new	25,000,000
company, in the amount of	12,000,000
amount of	8,000,000
the amount of	16,819,000
amount of	67,275,500

Making a total of assumed liabilities of.. \$229,094,500

This was a very substantial contribution for any third party to make to the success of a Central Pacific reorganization plan. True, the Southern Pacific received Central Pacific stock for its cash advance, but the value of this stock at the time was slight. The real consideration which counted with the Southern Pacific was the control of the Central Pacific system.

Execution of Agreement

In carrying out the proposed plan the commission named in the Act of July 7, 1897, reported to Congress under date of February 15, 1899, that an agreement had been reached, and that the subsidy bonds were to be refunded into twenty notes of \$2,940,635.78 each. On March 3, 1899, Congress authorized the Secretary of the Treasury to sell the first four notes in order that the agreement with Speyer and Company might be carried out. These notes were already in the Secretary's hands. They were duly purchased by the bankers named on March 10 of the same year. During the summer of 1899, the Central Pacific Railway was incorporated to succeed the former rail-road company, and the various issues called for by the reorganization plan were put forth. On February 1, 1909, the last of the refunding notes matured and was duly paid. The divorce of the Central and Western Pacific companies from the government was complete.

To anyone who has followed the long drawn-out discussions between the Central Pacific and the government, the speed with which the final settlement was made and the favorable terms which the government secured come as a distinct surprise. Not once during the twenty years following the passage of the Thurman Act had it been suggested that the Central Pacific could meet principal and interest of the government loan on condition only that it be granted an average extension of five years on its indebtedness with interest at 3 per cent on delayed payments. The result was properly regarded as a triumph for the administration.

In a measure, also, the settlement justifies in a general way the entire policy of the administration with respect to the issue of subsidy bonds to the Central and Western Pacific Railroad companies. These subsidy bonds were issued originally for a well-considered purpose. The purpose was accomplished, and repayment of the loan was secured without important delay. From a business point of view the operation was therefore a distinct success. Doubtless there were disadvantages connected with the policy. Such were the many disputes between

^{39 30} United States Statutes 1214, 1245 (1899).

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CHAPTER XXII

THE SOUTHERN PACIFIC MERGER CASES

New Era

There is no question that the final separation of the finances of the Central Pacific from those of the United States government was a matter of very great importance to both parties. The direct result was to place the federal government outside the Central Pacific instead of inside it. Instead of holding the dual relation of creditor and regulating body, Congress now stood as regards the Central Pacific in the same position as with respect to every other railroad in the United States—without interest in the company's internal finance, but free to act in the interests of the consuming, shipping, and investing public. This was an immense advantage, both from the point of view of the government and from that of the railroad itself.

The Central Pacific reorganization of 1899, moreover, not only accomplished a desirable change in the external relations of the Huntington lines, but it also brought about a change in the relations between the Central Pacific Railroad and the Southern Pacific Company which was of considerable significance. It will be recalled that from 1885 to the time of the reorganization of the Central Pacific in 1899, these relations had rested upon a leasehold interest only. The insecurity of such a connection had been brought forcibly to the attention of the Southern Pacific management during the course of the reorganization proceedings. But as a result of the participation of the Southern Pacific in the reorganization which made possible the repayment of the government debt, that company became possessed of the ownership of the entire outstanding Central Pacific common and preferred stock. While such

A year or two later an atterto pay in dividends earnings be expended in improvement 150,000 additional shares, renewed for the last time, Congress which promised to majority of Southern Papurchases ceased after 74,00 50,000 of these shares were sthe episode. On June 30, 19 Oregon Short Line owned Pacific common, or 46 per sufficient to give undisputed

Harriman System

This purchase by the Uni in the stock of the Southern in a railroad system of abo Omaha, Kansas City, and I Angeles, San Francisco, and means of the Morgan Steam In addition, the Union Pacific Mail Steamship Com

in the Illinois Central, the Chicago and Alton, and other lines, and by contract with the San Pedro, Los Angeles, and Salt Lake, it possessed in varying degree influence over connecting and competing roads.

Undoubtedly its association with the Union Pacific increased the prestige of the Southern Pacific Company at the time when the merger took place. The association involved, however, serious dangers, for it placed the credit and the earning power of the Southern Pacific at the disposal of Mr. Harriman for speculative projects in eastern fields, and also it ran counter to a national policy opposed to great accumulations of capital under single control which was presently to become clearly defined. It is true that public hostility toward big business seemed unimportant in 1901 when the Union Pacific and the Southern Pacific first combined, yet the attitude of the courts toward monopoly became a matter for serious consideration by the latter in 1911, ten years after the original merger had taken place, when the federal government attacked the Union Pacific-Southern Pacific consolidation as a combination in restraint of trade under the terms of the Sherman Anti-Trust Act of 1800. A brief discussion of the issues of this extremely important lawsuit is therefore necessary.

There was perhaps some ground for conflicting views with respect to the motive which had induced the Harriman interests to seek control of the Southern Pacific. The obvious explanation of the operation was that the Union Pacific desired to increase its power in the South West. It was stoutly maintained by Mr. Kahn, of Kuhn, Loeb and Company, however, that the desire to control the Southern Pacific line from San Francisco to El Paso was not a motive in the transaction. The necessity of buying the Sunset route, he said, was considered an obstacle and a deterring feature. If a way could have been found to secure the Central Pacific alone, it would have been preferred at the time. The possible reduction of competition

union Pacific should receive ability and of the railroad ger possible for him to give it, an put upon him any more burbest development of the Unindividually, felt that if the Sorkeeping only the Central Pacifin California, and getting ri-Southern Pacific, we would be

Arguments of Railroad Cour

The contention of the U was that the consolidation of Pacific properties was legal une of motive, because the two sy that the government was unable the consolidation took place the consolidation took place the factorial conference of stock instead of by contract road corporations concerned. also argued that, as a matter of another's stock did not of majority was held. Control, so A minority may direct the opmajority has confidence in it,

the Union Pacific possessed only a minority interest in the first-named company.

Apart from this, counsel contended that a purchase of stock was a thing which the federal government could not control, for the reason that the acquisition or disposition of property was not commercial intercourse. "If any citizen should step into a broker's office on Broadway, New York, buy some stock in the Pennsylvania Railroad, pay for it, put the certificates in his pocket, and walk out, would he, or the broker, or the broker's principal, be engaged in commercial intercourse between nations and parts of nations? . . . Would a state corporation buying those certificates be in any different situation from an individual purchaser, if the State of its domicile had endowed it with corporate power to buy stock?"

Moreover, to continue the argument, though purchases of stock were subject to federal law, they would violate no provisions of the Sherman Act. A purchase or sale is not a contract in restraint of trade, for a contract is executory, implying something yet to be done; while a sale is executed, completed when made and because it is made. Nor is a contract in restraint of trade necessarily unlawful. It must be undue, that is, not entered into with the legitimate purpose of reasonably forwarding personal interest and developing trade. The same may be said of an attempt to monopolize. Every act of competition tends to drive competitors out of business, but competition is legal, in the absence of fraud or duress. It follows that an individual may buy out a competitor, and then another competitor, and so on, and a corporation may do the same thing. "It is evident," said Mr. Dunne's brief, "fraudulent, intimidating, coercive, and other like wrongful and unlawful methods apart —that here we touch a fundamental principle of the freedom to buy and sell, of the legal right of the individual in respect to his own property."

Government's Contention of Previous Competition

The arguments of railroad counsel in defense of the Union Pacific-Southern Pacific merger rested predominantly, although not wholly, upon points of law such as have been mentioned. Fundamental as some of these were, the main interest in the case for the ordinary student will be found in the elaborate analysis of the competitive relations between the Southern Pacific and the Union Pacific which the government developed in the course of its argument. So far as the writer is aware, no record has ever been presented to any court in which the nature and extent of the competition between two great railroad systems has been so thoroughly discussed.

In establishing the fact that competition had been active between the Southern Pacific and the Union Pacific before the merger of the two companies in 1901, the government insisted upon the fact that the Central and Southern Pacific managers had continuously diverted all the traffic which they could control to the Sunset route so long as they remained independent of Union Pacific dictation.8 The government examined no less than seventy witnesses—shippers, Southern Pacific employees and ex-employees, and representatives of independent railroad lines. Among those who testified were Mr. Hawley, for nineten years eastern agent of the Southern Pacific and afterwards a financier of prominence; Messrs, Stubbs, Spence, and Munroe, of the traffic department of the Southern Pacific; Paul Morton, one-time vice-president of the Equitable Life Assurance Company: Mr. Jeffery, president of the Denver and Rio Grande; and Mr. Hannaford, in charge of traffic on the Northern Pacific

Substantially all these witnesses testified that traffic from the Atlantic seaboard could move to the Pacific Coast either viz the Morgan Steamship Line to New Orleans and thence over the Sunset route of the Southern Pacific to San Francisco, or

³ This question of the diversion of business from the central route has been discussed in Chapter XX.



Map showing mileage owned in 1913 by the Central Pacific Railway and the Southern Pacific Railroad.



via the trunk lines and their connections to Omaha, thence over the Union Pacific to Ogden and over the Central Pacific to the coast. Although the Southern Pacific was interested in both of these routes, it secured all the revenues from freight moving via the Sunset route, and only 30.1 per cent of the total revenue from freight delivered to it by the Union Pacific at Ogden. In consequence, it used its best efforts to influence freight to travel by the southern line.

The government showed by the evidence of shippers that freight was actually solicited in competition between the two Pacific companies. The Southern Pacific, it appeared, took traffic at New York rates from as far west as Buffalo and Pittsburgh, not including those cities, and from as far south as Norfolk. Not only this, but the Union Pacific was not altogether restricted to the route via Ogden. By diverting freight at Granger and sending it north to Portland over the Oregon Short Line and the Oregon Railroad and Navigation Company, it could affect the transcontinental rate in two ways. In the first place, it was physically possible for traffic to move from Portland to San Francisco by boat; and in the second place, a slight reduction in the rate to Portland compelled a cut to every Pacific terminal point in order to maintain these different cities in the same relative position for the distribution of eastern goods. As Mr. Stubbs expressed it, "Let the rate be cut on the Great Northern, and it goes down to the Gulf of California."

Mention may also be made of the route via the Isthmus of Panama, in which the Southern Pacific had an interest by virtue of its control of a steamship line from San Francisco to Panama. The business was not large, but in so far as any moved this way it was in competition with the rail lines via Ogden.

Competition between Other Points

In addition to competition between the Southern Pacific and the Union Pacific on business between the Pacific Coast and

Dissolution of Merger

This demonstration that the Union Pacific and the Southern Pacific had competed with each other before the merger of 1901, followed by easily secured evidence that the competition had ceased after the merger, was sufficient to persuade the Supreme Court to grant the government a decree, in spite of the protests of the defendant railroads.4 The effect upon the Southern Pacific was of course important. A drastic reorganization of the affairs of the company was called for in order to take the Southern Pacific out of the control of the Union Pacific and to re-establish the conditions of the Huntington Such a reorganization presently occurred. While the details of this transaction are not of present significance, it may be said, in brief, that after several abortive attempts the Union Pacific disposed of all its Southern Pacific stock under a teorganization plan dated May, 1913, delivering some of this stock to the Pennsylvania Railroad in exchange for stocks of the Baltimore and Ohio Railroad, and selling the rest to the general public.5 Henceforth the rail lines of the Southern Pacific were not to reach east of New Orleans and of Ogden.

Attack on Control of Central Pacific

When the United States Supreme Court declared that the Union and Southern Pacific systems must be separated, it merely restored the latter to a condition of independence. The United States Department of Justice was of opinion, however, that the logic of the decision went further than this, and, encouraged by its preliminary success, it took the dramatic step of attempting to separate the Southern Pacific and the

⁴ United States v. Union Pacific Railroad Company, 226 U. S. 61, 470 (1912, 1913).

⁵ Preferential subscription rights were given to Union Pacific and Oregon Short Line Railroad Company stockholders, on condition that these last-named individuals direst themselves of their ownership of Union Pacific and Oregon Short Line shares before actually receiving their Southern Pacific certificates. See Daggett, "Later Developments in the Union Pacific Merger Case," sup. cit.

Central Pacific companies by the application of the same principles which had torn the Southern Pacific and the Union Pacific apart. The new suit was known as the United States v. Southern Pacific Company, and, like the old, was brought under the Sherman law.⁶

The principal points in the case of the United States v. the Southern Pacific Company were as follows. A glance at the accompanying map will show that the Central Pacific Railroad, from Ogden to Sacramento, and the Western Pacific, from Sacramento to Oakland, were in practical effect but the western end of a route of which the Union Pacific formed the eastern part. So far as competition was concerned, all parts of the route were on a parity. If the Union Pacific competed with the Southern Pacific when it hauled eastern freight from Omaha to Ogden, the Central Pacific did likewise when it hauled the same freight from Ogden to Sacramento. If it would promote competition to place the Southern Pacific and the Union Pacific in separate hands, the same could be said of the Central Pacific and its southern neighbor. So much is reasonably clear even from a cursory examination of the facts.

In at least two important respects, however, the relations between the Southern Pacific and the Central Pacific differed from those between the Southern Pacific and the Union Pacific. These points were emphasized in the briefs of counsel, and formed the basis of the companies' defense. Unlike the Union Pacific, the Southern Pacific had obtained control of the stock of the Central Pacific at a time when and under circumstances in which the federal government was an interested party. If the details of the reorganization of 1898 are recalled, it will be remembered that the government then accepted notes in satis-

⁶ This was the second suit of the same nature. In July, 1894, Richard Olney, United States Attorney-General, filed a bill in the United States District Court at Los Angeles to dissolve the Southern Pacific combination. In 1894, as in 1915, it was charged that the consolidation of the Southern Pacific and the Central Pacific companies was illegal under the Sherman law. The Olney suit was later withdrawn.

The suit of the United States v. Southern Pacific Company was argued before the circuit judges of the Eighth Circuit sitting at St. Louis in December, 1915. The decision of a majority of this court was rendered in March, 1917, and was unfavorable to the government's contention.8 The grounds of this opinion were not brought out with complete distinctness, but two judges held that there had never been a "natural and existing competition" in interstate commerce between the Southern Pacific and the Central Pacific. Nearly half of the text of the decision, moreover, was devoted to a description of the financial settlement of 1899, in which Congress appeared to have treated the control of the Central Pacific by the Southern Pacific as consistent with the statutes of the United States. Judge Carland dissented from the conclusions of his colleagues in a carefully prepared opinion. The case was appealed, and after full oral argument, was submitted to the Supreme Court on April 19, 1921. An early decision is expected. Meanwhile, the continued close relations between the Central Pacific and the Southern Pacific are approved by public sentiment upon the Pacific Coast, while the continuance for the present of common control of the two companies certainly avoids many practical difficulties.

⁸ United States v. Southern Pacific Company, 239 Fed. 998 (1917).

CHAPTER XXIII

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OIL AND TIMBER LAND LITIGATION

Oil Land Ownership

The discussion in the previous chapter dealt with litigation under the Sherman law which checked the absorption of the Southern Pacific by the Union Pacific system and profoundly altered the relations of these two companies to each other. Our narrative will close with the mention of two other suits or groups of suits which concerned, the one, the possession of certain oil properties in southern California, and the other, the administration of lands—mainly timber lands—granted to the Oregon and California Railroad in the North by federal legislation of 1866 and 1869. The Southern Pacific Company took part in both of these controversies as a principal interested party.

The oil lands which until recently belonged to the Southern Pacific Railroad lay principally in the West San Joaquin fields in southern California. They covered an area of between 160,000 and 170,000 acres. In 1917, a committee of the California State Council of Defense estimated that the Southern Pacific and its subsidiary companies controlled 26.4 per cent of the total output of the state, although much of the oil so controlled was not produced upon the company's own land. The actual production of oil by the Southern Pacific Company in June, 1918, was 49,679 barrels out of 282,672 barrels of production by all companies in the state, or a little less than 18 per cent. No later statistics of production by companies have been made public. In June, 1920, however, the Southern Pacific Land

Including the output of the Associated Oil Company.

Third Annual Report of the State Oil and Gas Supervisor of California, 1917-18.

Company owned 19.38 per cent of all the proven oil land in California, and in addition the Southern Pacific Company held a controlling interest in the Associated Oil Company, also a large producer.

Unquestionably the Southern Pacific oil lands are valuable. A witness in one of the recent cases testified that he had told Mr. Huntington in 1893 that the railroad oil lands were worth more than the entire Southern Pacific Railroad, while it is common report that the value of the properties may run into the hundreds of millions of dollars. All this is, moreover, recent. The discovery of oil in large quantities was first made in southern California in the Kern River field, near Bakersfield, in the spring of 1800. This was followed by discoveries in the socalled McKittrick and Sunset fields, and by an oil boom of extraordinary proportions. In so far as the railroad owns oil lands, it has therefore recently secured an unearned increment which is not only of great size, but of a character entirely unanticipated by legislators of earlier days. This has given rise to controversy, in which the government has questioned the railroad title.

The peculiarity of the oil land litigation, and the reason why the federal government is involved, is found in the fact that the railroad land is mostly land-grant land, lying within the limits laid down by the Act of 1866 from which the Southern Pacific Railroad took its life. It follows from this that the railroad title was affected by certain reservations in the land-grant legislation, such as that of exempting mineral lands from the operation of the grants. The government offered to convey certain land to the railroad free of charge when it undertook to stimulate railroad building in California, but it did not include mineral land in this offer, except coal land and iron land. Not only this, but the exception of mineral lands was repeated in the patents later issued by the Department of the Interior, and in such patents the words, "excluding and ex-

cepting all mineral lands should any such be found in the tracts aforesaid," were used, making the exemption apply to future discoveries as well as to discoveries occurring before the patents were issued. Evidently the legislature and the land office intended to limit the donations to the Southern Pacific by excluding unknown and immeasurable increments of value in so far as this might be done. Coal and iron were left, for the reason that these minerals were intimately connected with the construction and operation of the road.

Test Case

In 1910, one Edmund Burke filed a bill in equity in the Circuit Court of the United States for the Southern District of California, in which he challenged the title of the railroad to oil lands in an area covering five sections in Fresno County, California. This was a test case. Disregarding minor points, the larger questions at issue were the following:

The first question was as to whether or not oil was a mineral. The plaintiff said that it was a mineral, the defendant said that it was not. If oil was a mineral, then the railroad could not obtain title under the land-grant laws to land which was known to contain oil at the time the patent was applied for. If oil was not a mineral, there was no limitation. Now matters of definition always cause trouble. The word "mineral" is sometimes associated with metallic ores, a notion which would not include a resultant from the decomposition of organic matter such as California petroleum. Indeed, the Secretary of the Interior once held that the word "mineral" embraced only the more precious metals, such as gold, silver, cinnabar, etc., although on rehearing this view was rejected. Common usage includes more than the metallic ores, and the courts have considered as mineral such articles as clay, coal, and marble, and even deposits such as guano.8 When the matter was presented to it, the

For a full discussion of this and kindred subjects, see Lindley on Mines, ed. 3.

United States Supreme Court followed common usage and held that petroleum was a mineral.4

The second point had to do with the effect of a patent. It was shown that the Southern Pacific had received patents as early as 1892 to lands which ultimately proved to contain petroleum, and there was dispute as to whether this subsequent discovery invalidated title to property once patented. On this point, fortunately, the law was clear. Quoting the Supreme Court:

The settled course of decision . . . has been that the character of land is a question for the Land Department, the same as the qualifications of the applicant and his performance of the acts upon which the right to receive the title depends, and . . . [that] when a patent issues it is to be taken upon a collateral attack, as affording conclusive evidence of the nonmineral character of the land and of the regularity of the acts and proceedings resulting in its issue, and upon a direct attack, as affording such presumptive evidence as to require plain and convincing proof to overcome it.

The Supreme Court therefore held that the Southern Pacific was secure in its possession of lands to which it held patent, unless fraud could be shown, and this irrespective of any saving clause in the patent itself, and without regard to the nature of the investigation by which the Land Office had originally satisfied itself as to the character of the land.⁵

Elk Hills Suit

The effect of the rulings of the Supreme Court in the test case of Burke v. Southern Pacific was not only to cause the dismissal of the pending suit, but to make it evident that the government must show fraud on the part of the railroad company before the company's title could be disturbed. The hold-

⁴ Burke v. Southern Pacific, 234 U. S. 669 (1914).

⁵ Ibid., pp. 691-92. See also Roberts v. Southern Pacific Company, 186 Fed. 934 (1911).

ing of the court that oil lands were mineral lands was, however, an important victory for the government. It was under these circumstances that the federal government instituted a fresh series of suits. Of these, one suit called in question the title of the Southern Pacific to some 6,100 acres of land in the Elk Hills region of southern California, held under a patent issued December 12, 1904. The other suits attacked the legality of the railroad's possession of substantially all its remaining oil lands, obtained at various dates from 1892 to 1902. The value of the lands involved in the second proceedings was estimated by the government as in excess of \$421,000,000. Counsel alleged that the company's land agents, Messrs. Eberlein and Madden, had accompanied the lists, which they had submitted to the government for patenting, with affidavits stating that the lands were not mineral lands, although both agents knew at the time the patents were applied for that the lands in question contained oil. This charge, if substantiated, amounted to a showing of fraud. In both cases the government sought to show that the presence of oil upon the lands sought was a matter of common knowledge, and that there was reason to believe that the company was fully cognizant of the facts.

Most of the sensational testimony taken in the oil land cases appeared in the so-called Elk Hills case. Mr. Eberlein here figured as the land agent for the Southern Pacific. Omitting again all relatively unimportant detail, it appeared that Mr. Eberlein had filed an affidavit with the Land Office in November, 1903, in which he swore to two pertinent facts: first, that he had caused the lands for which the railroad applied to be carefully examined by the agents and employees of the company as to their mineral or agricultural character; and second, that to the best of his knowledge and belief, none of the lands returned in the list were mineral lands. These statements had been repeated in September, 1904, when a substitute list was filed.

were not mineral when they believed the fact was otherwise.⁸ The decree of the United States Supreme Court requiring the cancellation of the railroad patents to the 6,000 acres of land in the Elk Hills district was given on November 17, 1919.

Three months before this Supreme Court decision, Judge Bledsoe, in the District Court for the Southern District of California, dismissed a suit challenging title to some 165,000 acres of land in the oil territory on the west side of the San Joaquin Valley.9 This suit represented a consolidation of the oil land suits other than those included in the Elk Hills case. Perhaps 156,000 of the acres under litigation were claimed by the railroad. Cases are seldom alike, and the Bledsoe case differed from the Elk Hills controversy in several important details. In this case, for example, it appeared that the railroad had sold lands in the disputed territory at agricultural prices-a policy which it presumably would not have followed had it believed that these lands had mineral value. There was also lacking much of the direct evidence which had helped to demonstrate the fact that Mr. Eberlein had distorted the truth in his representations to the government. On the other hand, the refusal of Judge Bledsoe to believe that men like the general manager of the Southern Pacific, its land agent, and its vice-president would lend themselves to fraud, is less impressive after a perusal of the Elk Hills material. The government has announced that it will not appeal from Judge Bledsoe's ruling-a decision which, on the face of things, appears to be a mistake.

Sale of Oil Lands

The most recent development in connection with the Southern Pacific oil lands is associated with the organization of the Pacific Oil Company. The formation of this company was

⁸ United States v. Southern Pacific Company, 251 U.S. 1 (1919). The decision of the Circuit Court of Appeals, which was favorable to the railroad, is reported in 249 Fed. 785 (1918).

⁹ United States v. Southern Pacific, 260 Fed. 511 (1919). See also 404d., 225 Fed. 197 (1915).

the railroad \$2.50 per acre of the original grant, no more and no less, taking full account of the sums already received by the company. The constitutionality of the law was later upheld by the Supreme Court.¹⁷



¹⁷Oregon and California Railroad Company v. United States, 243 U. S. 549 (1917). Suit was brought by the United States in 1917, in accordance with the law, seeking to offset against the compensation of \$2.50 per acre due the company for the unsold lands, moneys received by the company, in excess of \$2.50 per acre, by reason of past sales, leases, and otherwise, as well as taxes levied since the forfeiture decision and voluntarily paid by the federal government to the state of Oregon. This case was ready for trial in 1921 and will probably be soon heard and decided.

Principles of Operation

There are three principles relating to the operation of these railroad properties which the author feels that he can attribute with some confidence to Huntington and his friends. The first of these was that the Southern Pacific enterprise should remain under the associates' control and free from eastern entanglements. The second was that railroad monopoly in California was essential to a satisfactory railroad profit, and that the utmost possible profit should be exacted when monopoly power had been attained; and the third was that regulation by public bodies was in all respects objectionable, although public grants were considered to be legitimate sources of revenue.

Looked at in a comprehensive way, the history of the Southern Pacific may be said to have centered in the application of these principles to the solution of a series of problems. of which the final disposition of the Southern Pacific oil and timber lands was the last. These problems, to name them consecutively, included the construction of the original Central Pacific and Southern Pacific railroads; the establishment of these companies as going concerns with opportunity for prosperity and power; and the adoption by the associates of policies with respect to government regulation, with respect to rates, and with respect to relations with competing lines. They included also the negotiation of a plan of settlement with the federal government under which the financial assistance tendered to the companies in their younger days was repaid, and the railroad stood forth free of unusual responsibility and devoid of special privilege. At a later date the merger of the Southern Pacific with the Union Pacific represented an additional adventure, although one which was never part of Huntington's plan; and still another episode, the oil and timber litigation just described, was concerned with a forced liquidation of interests of which Huntington had known and approved.

Two Eras in Company's History

Grouped in a somewhat different way, but with the same essential point of view, the history of the Southern Pacific may be divided into two parts, the one ending and the other beginning in or about the year 1883. Before 1883, the Huntington group was primarily interested in construction from Sacramento to Ogden in order to obtain the benefit of the federal subsidy, and in construction in southern California, New Mexico, and Arizona, in order to prevent the building of an independent competing line. In this period, also, steps were taken to crush the competition of certain local enterprises in California. After 1883, or more accurately, after 1879, the attention of the associates was concentrated upon the establishment of their credit, the resistance to the threatened regulation by the state of their properties in California, and upon the competition of the newly created transcontinental railroad lines and the water routes from the Pacific to the Atlantic Coast. The second of these dangers led them into local politics, and the third resulted not only in a variety of agreements with competitors, but also caused the Southern Pacific to modify its rate structures and to subsidize potential competitors upon the sea. Still later came the necessity of repaying the loans which the Central Pacific had received from the federal government at the time of the construction of its road and the new relations with the Union Pacific under the Harriman régime. The oil and timber litigation, though falling within the second period, represented the closing up of grants received in the first.

In solving all the problems presented in the course of the Southern Pacific's career, the associates followed consistently the three fundamental principles laid down in a preceding paragraph whenever the principles were applicable and the circumstances permitted of a deliberate choice. The only striking variation from them occurred when the Union Pacific was allowed to obtain a controlling interest in Southern Pacific

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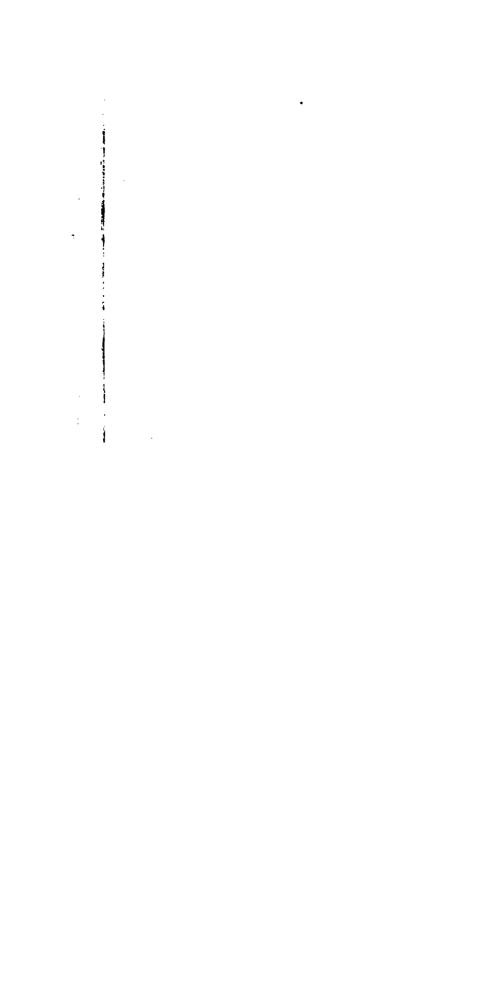
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